

ORIGINAL

RECEIVED
CLERK'S OFFICE

JUL 28 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
THE HIGHLANDS, LLC, an Illinois limited)
liability corporation, MURPHY FARMS, INC.,)
a/k/a MURPHY FAMILY FARMS, a North)
Caroline corporation, and BION)
TECHNOLOGIES, INC., a Colorado corp.,)
)
Respondents.)

STATE OF ILLINOIS
Pollution Control Board

PCB NO. 00-104
(Enforcement)

NOTICE OF FILING

To: Mr. Jeffery W. Tock
Harrington, Tock & Royse
201 W. Springfield Ave.
P.O. Box 1550
Champaign, IL 61824-1500

Mr. Charles M. Gering, Esq.
McDermott, Will & Emery
227 West Monroe Street
Chicago, IL 60606-5096

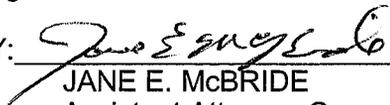
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, RESPONSE TO RESPONDENT HIGHLANDS, LLC'S MOTION FOR SUMMARY JUDGMENT ON COUNT I OF THE AMENDED COMPLAINT, a copy of which is attached hereto and herewith served upon you.

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
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: July 25, 2003

0-1-5

CERTIFICATE OF SERVICE

I hereby certify that I did on July 25, 2003, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING and RESPONSE TO RESPONDENT HIGHLANDS, LLC'S MOTION FOR SUMMARY JUDGMENT ON COUNT I OF THE AMENDED COMPLAINT

To: Mr. Jeffery W. Tock
Harrington, Tock & Royse
201 W. Springfield Ave.
P.O. Box 1550
Champaign, IL 61824-1500

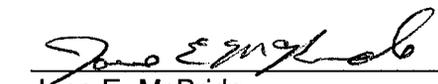
Mr. Charles M. Gering, Esq.
McDermott, Will & Emery
227 West Monroe Street
Chicago, IL 60606-5096

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Mr. Brad Halloran, Hearing Officer
Illinois Pollution Control Board
State of Illinois Center, Ste. 11-500
100 West Randolph
Chicago, IL 60601



Jane E. McBride
Assistant Attorney General

This filing is submitted on recycled paper.

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED

CLERK'S OFFICE

JUL 28 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS)
)
 Complainant,)
)
 v.)
)
 THE HIGHLANDS, LLC, an Illinois limited)
 liability corporation, and MURPHY)
 FARMS, INC., (a division of MURPHY-)
 BROWN, LLC, a North Carolina limited)
 liability corporation, and SMITHFIELD)
 FOODS, INC., a Virginia corporation).)
)
 Respondents.)

PCB No. 00-104
(Enforcement)

**RESPONSE TO RESPONDENT HIGHLANDS, LLC'S MOTION FOR SUMMARY JUDGMENT
ON COUNT I OF THE AMENDED COMPLAINT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel* LISA MADIGAN, Attorney General of the State of Illinois, and responds to Respondent Highlands, LLC's Motion for Summary Judgment on Count I of the Amended Complaint, as follows:

1. On June 13, 2003, Respondent Highlands filed a Motion for Summary Judgment on Count I of the Amended Complaint. In its motion, Respondent Highlands alleges that Complainant is barred from bringing Count I of the Amended Complaint by the doctrine of *res judicata* because Roy and Diane Kell are the only individuals named in the allegations and the Kells have brought and settled an action for private nuisance as of March 11, 2002. Respondent Highland's motion also seeks relief from all allegations contained in Count I that may be alleged to occur after March 11, 2002, based on the assertion that Roy and Diane Kell have not complained of odors to the Highlands or the Illinois EPA since that date.

2. The doctrine of *res judicata* has been described by Illinois courts as follows:

The doctrine of *res judicata*, briefly stated, is that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action

involving the same claim, demand or cause of action. [Citation.] The doctrine of *res judicata*, in all cases where the second suit is upon the same cause of action and between the same parties or their privies as the former action, extends not only to the questions actually litigated and decided, but to all grounds of recovery or defense which might have been presented. [Citations.] When a former adjudication is relied upon as an absolute bar to a subsequent action, the only questions to be determined are whether the cause of action is the same in both proceedings, whether the two actions are between the same parties or their privies, whether the former adjudication was a final judgment or decree upon the merits, and whether it was within the jurisdiction of the court rendering it.

People v. Kidd, 398 Ill. 405, 408-09 (1947). More recently, in *People v. Progressive Land Developers, Inc.*, 151 Ill. 2d 294, 176 Ill. Dec. 874 (1992), the Illinois Supreme Court summarized the three criteria as “(1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of cause of action; and (3) an identity of parties or their privies.” See also *Low v. A & B Freight Line, Inc.*, 175 Ill. 2d 176, 180, 222 Ill. Dec. 80 (1997).

3. The Illinois Pollution Control Board has applied the doctrine similarly:

Under the doctrine of *res judicata*, once a court decides a cause of action, it cannot be retried between the same parties. *People v. Jersey Sanitation Corp.*, PCB 97-2, slip op. at 4 (April 4, 2002). The bar extends to what was actually decided in the first action, as well as those matters that could have been decided in that suit. See *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302, 703 N.E.2d 883, 889 (1998). In general, *res judicata* applies when three elements are present: (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of the parties or their privies; and (3) an identity of cause of action. *Jersey Sanitation*, PCB 97-2, slip op. at 4-5.

People v. Peabody Coal Company, PCB 00-134, slip op. at 14 (June 5, 2003)

- I. **Determination as to whether or not there is identity of causes of action.**

4. In the case of *River Park, Inc. v. City of Highland Park*, 184 Ill.2d 290, 310 (1998), 703 N.E.2d 883, the Illinois Supreme Court adopted the transactional test for the determination as to whether or not there is an identity of causes of action. In order to determine whether there is an identity of cause of action between the first and second suits under the

transactional test, the Court must look to the facts that give rise to plaintiffs' right of relief, not simply to the facts which support the judgment in the first action. *Rein v. David A. Noyes & Company et al*, 172 Ill.2d 325, 338-339, 665 N.E.2d 1199.

5. The matter of *Roy Kell and Dianne Kell v. The Highlands, LLC, and Murphy Family Farms, Inc.*, Knox County Case No. 99 L 62, was a private nuisance suit brought by the Kells against The Highlands and Murphy Family Farms. The elements of a private nuisance suit include the following: Under Illinois law, in order to recover for private nuisance, plaintiffs must show that there was substantial invasion of use and enjoyment of their land, and that invasion was either negligent or intentional and unreasonable. *Sprague Farms, Inc. v. Providian Corp.*, 929 F. Supp. 1125, *In re Chicago Flood Litigation*, 176 Ill.2d 179 (1997), 680 N.E.2d 265, *rehearing denied*, The relief sought in the Kells private suit included civil damages and abatement of the nuisance. An applicant for injunction against an alleged nuisance must show that injury is imminent, as well as that there is no adequate remedy at law. *Matter of Chicago Rock Island and Pacific R. Co.*, 756 F.2d 517. In an action to enjoin an alleged private nuisance the trial court must balance harm done to plaintiffs against benefit cause by defendant's use of the land and the suitability of the use in that particular location. *Carroll v. Hurst*, 103 Ill.App.3d 984, 431 N.E.2d 1344. With regard to damages, measures with regard to damages for a permanent nuisance is depreciation in the market value of the property injured. Measure of damages for a temporary nuisance is the personal inconvenience, annoyance and discomfort suffered on account of the nuisance. *Tamalunis v. City of Georgetown*, 185 Ill.App.3d 173, 542 N.E.2d 402, appeal denied, 128 Ill.2d 672, 548 N.E.2d 1079. In order to be considered a permanent nuisance, a structure which constitutes or causes a nuisance must be lawful, for where such structure is unlawful a presumption arises that the force of law will be brought to bear so as to eradicate the illegality. *O'Brien v. City of O'Fallon*, 80 Ill.App.3d 841, 400 N.E.2d 456. Therefore, in the Kells private suit, Plaintiffs pled that the structure was in

violation of the State's air pollution provisions as well as the Board's agriculture-related regulations to meet the pleading requirements in support of its private nuisance suit. The subject facility's compliance with applicable law was relevant to the question of whether the Plaintiffs were alleging temporary or permanent nuisance and also the allegation of negligence. Nowhere in the prayers associated with the various counts did the Plaintiffs seek enforcement of the Section 9(a) of the Illinois Environmental Protection Act, 415 ILCS 5/9(a), nor the Board's agriculture-related regulation found at 35 Ill. Adm. Code 501.402(3), or seek an injunction based on violation of same.

6. In the instant matter, the cause of action alleged in Count I is statutory air pollution and violation of one of the Board's agriculture-related regulations. The relief sought is a finding that the Respondents have violated Section 9(a) of the Illinois Environmental Protection Act, 415 ILCS 5/9(a) and the Board's agriculture-related regulation found at 35 Ill. Adm. Code 501.402(3), a cease and desist order from further violation of the Act and regulations, and the assessment of a civil penalty based on the civil penalty provisions of the Illinois Environmental Protection Act, found at Section 42 of the Act, 415 ILCS 5/42. The assessment of such penalty is based upon the Section 42(h) factors, 415 ILCS 5/42(h). The elements of the cause of action necessary to obtain the requested relief include the elements of air pollution, as set forth formerly at Section 3.02 of the Illinois Environmental Protection Act, and now Section 3.115 of the Act, 415 ILCS 5/3.115; the elements of Section 9(a) of the Act, 415 ILCS 5/9(a) and Section 33(c), 415 ILCS 5/33(c); the elements of 35 Ill. Adm. Code 501.402(3); and the criteria of Section 42(h). A whole body of case law exists pertinent to a finding of violation of Section 9(a). This law is not applicable to a finding of private nuisance, and the award of damages or abatement. The relief sought in the two causes of action is very different. The Complainant in the instant matter is seeking a finding of violation of a state statute and assessment of civil penalties payable to the State in trust, based specifically on a

finding of violation. The Kells sought damages payable to themselves personally and abatement of a temporary private nuisance specific to their personal circumstances.

7. Attached to the affidavit of James Kammueler are exhibits that consist of information from the files of the Illinois EPA regarding citizens complaints submitted and field observations documented regarding odors emanating from this facility. These complaints include complaints submitted and field observations made after and including January, 2002. The citizen complaints and observations reported in Mr. Kammueler's affidavit do not represent the totality of the citizens complaints and observations submitted in this matter, but do provide a representation of the complaints submitted. Therefore, as evidenced by the information contained in and attached to Mr. Kammueler's affidavit, there are genuine issues of fact regarding the continuing allegations contained in Count I of the Amended Complaint.

II. Privity of Parties

8. In the instant case, the requisite privity between parties does not exist between the Complainant and Roy and Dianne Kell.

9. In the case of *Diversified Systems, Inc v. Boyd*, 286 Ill.App.3d 911, 916 (4th Dist. 1997), the court took a close look at the concept of privity:

Privity is said to exist between parties who adequately represent the same legal interests. *In re Marriage of Mesecher*, 272 Ill.App.3d 73, 76, 650 N..2d 294, 296 (1995) (no privity between Illinois Department of Public Aid and custodial mother in action for past-due child support). The word "privity" is not a precise one, and it is no longer used by the Restatement. The Restatement asks instead whether the nonparty controls the presentation of the case (Restatement (Second) of Judgments § 39 (1982)) or agrees to be bound by the determination (Restatement (Second) of Judgments § 40 (1982)) or whether the non-party is represented by a party (Restatement (Second) of Judgments § 41 (1982)). Representatives under the Restatement are restricted to five specific categories: trustees, person authorized by the nonparty, executors, authorized public officials, and class representatives designated by a court. Restatement (Second) of Judgments § 41(1) (1982)).

A nonparty is subject to *res judicata* effects of a suit only if its interests were adequately

represented. *In re L&S Industries, Inc.* 989 F.2d 929 (7th Cir. 1993); *Mesecher*, 272 Ill.App.3d at 76, 208 Ill.Dec. at 839, 650 N.E.2d at 296, citing *Progressive Land Developers*, 151 Ill.2d at 296, 176 Ill. Dec. at 879, 602 N.E.2d at 825. *Id.* at 918.

10. In the case of *In re Marriage of Mesecher*, 272 Ill. App. 3d 73, 76-77 (4th Dist 1995), 650 N.E.2d 294, the court held:

Res judicata will not operate to preclude a subsequent suit unless there is an identity of parties or privity. (*People ex rel. Burris v. Progressive Land Developers, Inc.* (1992), 151 Ill.2d 285, 296, 176 Ill. Dec. 874, 879, 602 N.E.2d 820, 825.) Privity exists "between parties who adequately represent the same legal interests." (*Progressive Land Developers, Inc.* (1992), 151 Ill.2d at 296, 176 Ill. Dec. at 879, 602 N.E.2d at 825, quoting *Hartke v. Chicago Board of Election Commissioners* (N.D.Ill. 1986), 651 F. Supp. 86, 90.) "It is the identity of interest that controls in determining privity, not the nominal identity of the parties [citation]." *Progressive Land Developers, Inc.*, 151 Ill.2d at 296, 176 Ill.Dec. at 880, 602 N.E.2d at 826.

Here, petitioner testified that although she appeared as a witness at prior collection proceedings, those proceedings were initiated by the IDPA, through the office of the State's Attorney. The issue is therefore, whether the IDPA adequately represented petitioner's interests in these prior proceedings. We hold that it did not. The separate parties claim separate monies. Petitioner presented uncontroverted testimony that the IDPA sought only to recoup the public aid monies it had expended; the IDPA was unconcerned with arrearages accruing prior to petitioner's receipt of public aid. Since the IDPA was not interested in the recovery of all monies due, it was not an adequate advocate for petitioner's interests.

We find the case of *Department of Public Aid ex rel Stark v. Wheeler* (1993), 248 Ill.App.3d 749, 188 Ill.Dec. 741, 618 N.E.2d 1311, to be instructive. There, the IDPA brought suit to decide the paternity of twins and the liability of the alleged father for support. Prior to the action initiated by the IDPA, the twins' mother had filed a paternity suit against the same alleged father. The mother's suit had been dismissed with prejudice, which operated as an adjudication on the merits. (*Wheeler*, 248 Ill.App.3d at 750-51, 188 Ill. Dec. at 743, 618 N.E.2d at 1313.) The court held that the IDPA's claim was not barred by *res judicata*, because the IDPA was not in privity with the mother. (*Wheeler*, 248 Ill.App.3d at 751, 188 Ill.Dec. at 743-44, 618 N.E.2d at 1313-14.) The court explained the interests of public agencies providing aid to children are different from the interests of the children's caretakers. *Wheeler*, 248 Ill.App.3d at 751, 188 Ill.Dec. at 744, 618 N.E.2d at 1314.

11. Similar to the case of *In re Marriage of Mesecher*, 272 Ill. App. 3d at 76-77, 650 N.E.2d 294, wherein the petitioner was a witness in the original case but later brought a case of her own to recover monies owed specifically to her, in the instant matter Roy and Dianne Kell

are witnesses in the State's case, but filed a private matter to recover individual damages. And, similar to the facts of the *Mesecher* case, in the instant case the State seeks "separate monies" in the form of a civil penalties, that were neither sought nor available in the cause of action brought by the Kells in their private nuisance suit.

12. The State's interest was not represented in the Kells' matter. The State's interest in the instant matter is that of seeking a finding of violation of Section 9(a) of the Act, 415 ILCS 5/9(a), and 35 Ill. Adm. Code 501.402(3), of obtaining a cease and desist order that most likely would consist of corrective actions taken at the facility so as to meet the requirements of an order to cease and desist from violations of the Illinois Environmental Protection Act and regulation promulgated thereunder, and a civil penalty. The Kells sought damages for themselves, and abatement of the nuisance only to such extent as would address their personal circumstances, which is all they would be entitled to under a private nuisance cause of action. The Kells, by no means, could have represented nor did they represent the State's interest within the confines of their private nuisance suit. The State's interests could not be accommodated in a cause of action of private nuisance. The Kells' sole interests in their private nuisance case, were their individual damages and abatement specific to their individual circumstance.

13. It is the State's understanding, although the actual settlement has been deemed confidential and both the Highlands and Murphy Family Farms have refused to provide the State with a copy of the settlement, that the Kells indeed received very individualized relief. They received an award of damages, and they and their landlord agreed to vacate the premise and raze the house. As is obvious from this settlement, the agreed "abatement" would only serve the individual circumstances of the Kells and by no means were the interests of the State either represented, served or accommodated in such a settlement.

III. Final Judgment

14. Respondent contends that the settlement and dismissal obtained in the Kells' private nuisance suit constitute a final judgment that meet the requirements of the first criteria for a finding of the applicability of *res judicata*.

15. In the case of *Elliott v. LRSL Enterprises, Inc.*, 226 Ill.App.3d 724, 728 (2nd Dist. 1992), 589 N.E.2d 1074, the court held:

A judgment is final for purposes of *res judicata* if it terminates litigation on the merits so that the only issue remaining is proceeding with its execution. (*Catlett v. Novak* (1987), 116 Ill.2d 63, 68, 106 Ill.Dec. 786, 506 N.E.2d 586.) It is true that an agreed order neither constitutes a judicial determination of the rights of the parties nor represents judgment of the court. (*Ad-Ex Inc. v. City of Chicago* (1990), 207 Ill.App.3d 163, 177, 152 Ill.Dec. 136, 565 N.E.2d 669.) Instead, it is a recordation of the private agreement of the parties. (*Kandalepas v. Economou* (1989), 191 Ill.App.3d 51, 53, 138 Ill.Dec. 329, 547 N.E.2d 496.) However, an order entered by consent of the parties operates to the same extent for purposes of *res judicata* as a judgment entered after contest, because it is conclusive with respect to the matters settled by the order, judgment, or decree. (*Barth v. Reagan* (1986), 146 Ill.App.3d 1058, 1064, 100 Ill.Dec. 541, 497 N.E.2d 519.) Any other interpretation would effectually nullify all settlements because the same claim would be subject to the possibility of future litigation and double recovery.

. . . An agreed order is considered a contract between the parties to the litigation. Accordingly, its construction is governed by principles of contract law. (*Flora Bank & Trust v. Czyzewski* (1991), 122 Ill.App.3d 382, 388, 164 Ill.Dec. 804, 583 N.E.2d 720; *Haisma v. Edgar* (1991), 218 Ill.App.3d 78, 87, 161 Ill.Dec. 36, 578 N.E.2d 163.) . . .

16. In the case of *Ekkert v. City of Lake Forest*, 225 Ill.App.3d 702, 707, 588 N.E.2d 482, a case in which plaintiffs attempted to bar the action based upon a theory of collateral estoppel which entailed much the same analysis as involved in a claim of *res judicata*, the court included the following in its decision:

Finally, the Federal court ruling was based on the consent of the parties to that case. The consent order states that the defendants denied that they had enforced or observed section 16.06; it is thus quite possible (based on the limited record that plaintiff provides) that the issue of whether section 16.06

violates the Federal Act was never actually litigated. Generally, courts are reluctant to give preclusive effect to consent judgments, in large measure because the extent to which issues are actually litigated in suits ending in consent judgments is often doubtful. (*La Preferida, Inc. v. Cerveceria Modelo S.A. de C.V.* (7th Cir. 1990), 914 F.2d 900, 906; *Avondale Shipyards, inc. v. Insured Lloyd's* (5th Cir. 1986), 786 F.2d 1265, 1272-73). The Federal consent order does recite that section 16.06 violates the Federal Act. Whether the defendants actually attempted to litigate this issue is unclear at best, and this lack of clarity (along with the failure to establish identity of issues or identity of the relevant parties) forbids giving the Federal consent order any preclusive effect here.

17. The basis of the resolution of the case of *Roy Kell and Dianne Kell v. The Highlands, LLC, and Murphy Family Farms, Inc.*, Knox County Case No. 99 L 62, is a settlement agreement that has not been made available to the State and has been deemed "confidential". As such it should only serve as the basis for a claim of *res judicata* pertinent to a claim of private nuisance regarding the actual parties to the original suit. To the State's knowledge, none of the issues of the private nuisance suit were litigated other than discovery disputes. The discovery orders remained uncomplished at the time the matter settled. Given the fact that there is no identity of cause of action between the Kells' private nuisance suit and the instant matter, and in that none of the material allegations of the private suit were litigated, the Board should follow the guidance provided by *Ekkert v. City of Lake Forest*, 225 Ill.App.3d at 707, 588 N.E.2d 482, and exercise great reluctance in giving the private nuisance suit settlement agreement preclusive effect in the instant matter. As described in the case of *Elliott v. LRSL Enterprises, Inc.*, 226 Ill.App.3d at 728, 589 N.E.2d 1074, the agreement in the Knox County private nuisance suit is of the nature of a contract between the parties in the suit and that is how it should be treated in the instant matter – as a privately negotiated contract concerning individual interests, negotiated and executed shrouded by a claim of confidentiality.

18. Of significance is the fact that Roy and Dianne Kell have refused to talk to Illinois EPA inspectors since the settlement was signed and entered. See the Affidavit of James

Kammueiler attached. They have refused to answer their door and they have failed to return phone calls. This behavior raises questions as to what might be included within the terms of this confidential agreement that now is being cited as a basis for a bar against all allegations contained within Count I.

IV. **Relief Sought by Respondent's Motion for Summary Judgment**

19. The prayer for relief at the conclusion of Respondent Highlands' Motion for Summary Judgment on Count I of the Amended Complaint, asks for two forms of relief based on the theory that Complainant's claims are barred by the doctrine of *res judicata*, and a third form in the alternative. In its prayer, Respondent requested that:

- A) The Board determine that the Complainant is barred by the doctrine of *res judicata* from pursuing any complaint against the Highlands arising out of complaints by either Roy Kell and/or Dianne Kell or utilizing any testimony by either Roy and/or Diane Kell in support of any alleged violation of any statute or regulation pertaining to or applicable to odors, whether past, present or future, originating from The Highlands hog facility.
- B) The Board enter summary judgment in favor of The Highlands and against the Complainant on Count I as a result of the Complainant being barred by *res judicata* from pursuing Count I as pled.
- C) In the alternative, if the relief requested above is denied, this Board enter partial summary judgment in favor of The Highlands on Count I for that period of time commencing March 11, 2002 forward for the reason that either (a) no odor(s) that originated from The Highland has (have) interfered with the Kells' enjoyment of their life or property since March

11, 2002 or (b) if there has been interference since the time, such interference has not been unreasonable.

A. Request that the Complainant be barred from pursuing allegations arising out of complaints by either Roy Kell and/or Dianne Kell or utilizing testimony by either Roy and/or Diane Kell in support of allegations of state statute and the Board's regulations.

20. Respondent's request that the testimony of Roy and Dianne Kell be barred from the State's case is clearly a serious attempt to interfere with and impair the State's right to present its case. As set forth above, the State's cause of action for and the State's interest in seeking relief in the form of a finding of violation of a state statute is wholly different and independent of the Kells private nuisance cause of action. The causes of action are different, there is no privity between the Kells and the State, and the final judgment considered to be the basis of this claim of *res judicata* is actually a settlement agreement and should not be given preclusive effect. The three criteria or elements necessary for a finding that a matter is barred by the doctrine of *res judicata* are not present. Therefore, there is absolutely no basis to bar the Complainant from pursuing allegations arising out of complaints by either Roy Kell and/or Dianne Kell nor is there any basis to bar the Complainant from utilizing testimony by either Roy and/or Dianne Kell in support of alleged violation of any statute or regulation pertaining to or applicable to odors, whether past, present or future, originating from The Highlands hog facility.

B. Request that the Complainant be barred by *res judicata* from pursuing all of the allegations contained within Count I of the Amended Complainant

21. Based on the foregoing, set forth in paragraph 2 through 20 of this response, there is clearly no basis for Respondent Highland's assertion of the doctrine of *res judicata*.

C. Request that the Board enter partial summary judgment in favor of The Highlands on Count I for that period of time commencing March 11, 2002 forward for the reason that either (a) no odor(s) that originated from The Highland has (have) interfered with the Kells' enjoyment of their life or property since March 11, 2002 or (b) if there has been interference since the time, such interference has not been unreasonable.

22. This request for relief is essentially, if not exactly, the same as the request contained in the request designated "A" above. It seeks summary judgment solely on the basis of its claim of *res judicata* with regard to the Kells. As set forth in Paragraph 20 as cited in Paragraph 21, there is clearly no basis for Respondent Highland's assertion of the doctrine of *res judicata*. In that *res judicata* is not applicable to this matter, there is no basis for a finding of summary judgment with regard to any testimony the Kells may provide regarding their experiences since January 2002. As set forth in the Affidavit of James Kammuller, the Illinois EPA has documentation of citizens complaints of odor emanating from the facility and inspectors field observations of off-site odors that concern dates after March 11, 2002.

23. Again, this request for relief, designated here as "C", is an attempt to improperly impair the State's ability and right to present its case. It is apparent the Kells are already either intimidated by the terms of the private nuisance case settlement, or misunderstand its ramifications. The State has not yet attempted to subpoena them for a discovery or evidence deposition to attempt to obtain information regarding the motivation for their behavior. The Respondent cannot be allowed to interfere with the State's witnesses to any greater degree than it already has.

24. Respondent has, in the affidavit of Doug Baird, set forth information regarding Mr. Baird's position pertinent to the Highland's facility regarding the Section 33(c) factors. It appears this was done because the only "people", as the Respondent states, that were identified in the Amended Complaint, were the Kells. This is not true. The Amended Complaint references other complaining individuals, as well, but not by name. Respondents have been provided copies of documentation concerning other neighbors who have filed complaints

regarding odor emanating from its facility and of field observations by Illinois EPA inspectors of offensive odors emanating from the facility off-site of the property. Dating from the first allegation of unreasonably offensive odors set forth in the Amended Complaint and continuing, there have been ongoing complaints and observations of off-site odors that emanated from The Highlands facility. See Affidavit of James Kammuller. As such, there are genuine issues of material fact that odors from The Highlands have interfered with the life and enjoyment of others.

25. The second factor in the Section 33(c) analysis is the social and economic value of the pollution source. It is the Complainant's continuing position that The Highlands' facility can only be of economic and social value to the surrounding community, to the Highlands' employees, and to the Highlands' customers, if it is operated in a fashion that does not violate Illinois environmental laws and regulations. By transmitting offensive odors off-site, The Highlands is causing the neighbors to absorb the costs and consequences of the environmental degradation caused by the hog facility. The attached Affidavit of James Kammuller is accompanied by exhibits containing field observations of off-site odors made by Illinois EPA inspectors and copies of neighboring residents documentation of odor events attributable to odor emissions from The Highlands facility.

26. The Highlands asserts in its Motion, in paragraph 25 on page 7, that there is no social and economic value in closing The Highlands. The State alleges many alternatives to closing the facility in the Amended Complaint, that entail the application of odor treatments. Closing is only one alternative. This facility has the option of installing appropriate odor control and continuing to operate. According to the information provided by Mr. Baird's affidavit attached to the Respondent's motion, the facility paid salaries in the amount of \$392, 716.00 in 2002. It has annual operating expenses of well over a million dollars. It is still in business, and therefore must be making money sufficient to stay in business. Complainant has been

informed that since January 2003, the Highlands has housed hogs owned by the Maschhoff family. The Illinois EPA files contain newspaper articles indicating that the Maschhoff family has several sow facilities under its ownership and control and is considered a very successful hog production concern. See Affidavit of James Kammueler. In that the Highlands and the Maschhoffs both have an ownership interest in the production structures and animals that are the source of the excrement that constitutes the waste which is the source of odor at this facility, there are genuine issues of fact as to the social and economic value of this facility and its ability to install appropriate odor control technology so as to be able to operate in compliance with the State's environmental statute and regulations. Therefore, there remain genuine issues of fact regarding the second Section 33(c) factor.

27. The third factor considered under Section 33(c) of the Act is the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location. In its motion, Respondent asserts information regarding local zoning, local planned land use, and actual local land use in the vicinity of the Highlands facility. It is Complainant's position that the Highlands' facility is not suitable to the site where it is located because it was built with inadequate odor control in close proximity to its neighbors given its capacity to produce and emit offensive odors. See Affidavit of James Kammueler. The facility stores manure in an uncovered anaerobic lagoon system, and uses a large number of exhaust fans to discharge odorous air from buildings and pits beneath the buildings to the surrounding atmosphere. The facility as constructed, with inadequate odor control for the lagoon system and buildings, is unlikely to prevent neighbors from experiencing odors at an intensity and frequency that interfere with the enjoyment of their lives and properties. See Affidavit of James Kammueler. Therefore, there remain genuine issues of fact regarding the third Section 33(c) factor.

28. The fourth factor under 33(c) is the technical practicability and economic

reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from the pollution source. At the time of construction of the facility, alternative facility designs and odor control technologies that are capable of preventing the release of odors to the extent experienced during field inspections, were available and were economically reasonable and technically feasible applications for this facility. See Affidavit of James Kammueller. Therefore, there remain genuine issues of fact regarding the fourth Section 33(c) factor.

29. The fifth Section 33(c) factor is the consideration of subsequent compliance. Based on field observations by Illinois EPA staff, any compliance measures installed at the facility have been inadequate in preventing unreasonable offensive off-site odors. See Affidavit of Jim Kammueller. Therefore, there remain genuine issues of fact regarding the fifth Section 33(c) factor.

WHEREFORE, for the foregoing reasons and on the foregoing grounds, Complainant respectfully requests that the Board deny Respondent The Highlands, LLC's Motion for Summary Judgment on Count I of the Amended Complaint.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JAMES E. RYAN, Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY:



JANE E. MCBRIDE
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

RECEIVED
CLERK'S OFFICE

JUL 28 2003

STATE OF ILLINOIS
Pollution Control Board

STATE OF ILLINOIS
COUNTY OF PEORIA

)
) ss ORIGINAL
)

AFFIDAVIT

I, JAMES E. KAMMUELLER, after being duly sworn and upon oath, state as follows:

1. I am employed by the Illinois Environmental Protection Agency ("Illinois EPA") Bureau of Water Pollution Control -Field Operations Section, as manager of their Peoria Regional Office.

2. As part of my duties with the Illinois EPA, I perform site investigations to assess whether environmental and/or public health threats exist. Upon formal request, I also review pleadings to be filed by the Attorney General's Office to ensure veracity and accuracy with investigation records, evidence gathered, as well as my own personal observations and knowledge.

3. In my capacity as manager of the Bureau of Water Pollution Control-Field Operations Section, Peoria Regional Office, I supervise all activities of the Bureau of Water field operations conducted at the Illinois EPA Peoria Regional Office. These activities include the investigation of wastewater discharge and release and odor air pollution complaints regarding farm and agricultural sites and facilities. I have worked for the Illinois EPA as a field inspector for over 33 years, and throughout that time have been involved in field investigations of environmental complaints concerning farms and agricultural facilities. I have personally conducted and supervised investigation of complaints regarding and site inspections of The Highlands. The custody of the Illinois EPA's field file on this facility is maintained under my supervision.

4. The Illinois EPA field office file contains documentation of the following. In the month of May 2001, Roy and Diane Kell, who are the neighbors who live 1/4 mile from the facility, reported the occurrence of unreasonably offensive odors that interfered with the use

and enjoyment of their property and interfered with the enjoyment of life at their residence on May 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 16, 17, 19, 21, 22 and 23.

5. On May 23, 2001, an Illinois EPA inspector met with the Kells at their residence to discuss the repeated occurrence of unreasonably offensive odors with them. While the inspector was interviewing the Kells in their home, the wind shifted, blowing from the direction of the facility. Even though the doors and windows were closed, and the windows were sealed and covered with plastic, the inspector experienced odors from the Highlands facility penetrating the Kells' home. See Exhibit A, attached hereto.

6. The Illinois EPA field office file contains documentation of the following. In the month of April 2001, the Kells reported the occurrence of unreasonably offensive odors that interfered with the use and enjoyment of their property and interfered with the enjoyment of life at their residence on April 1, 7, 8, 9, 12, 15, 18, 21, 23, 24 and 27.

7. The Illinois EPA field office file contains documentation of the following. In the month of March 2001, the Kells reported the occurrence of unreasonably offensive odors that interfered with the use and enjoyment of their property and interfered with the enjoyment of life at their residence on March 1, 2, 3, 7, 9, 12, 13, 14, 22, 23, 26, 27, and 31.

8. In the month of May 2001, Jack and Del Leonard, 2195 Knox County Highway 11, Williamsfield, IL 61489, who are neighbors who live 1 mile north of the facility, reported the occurrence of unreasonably offensive odors that interfered with the use and enjoyment of their property and interfered with the enjoyment of life at their residence on May 1, 2, 3, 6, 8, 9, 10, 13, 14 and 22. See Group Exhibit B, attached hereto.

9. In the month of April 2001, the Leonards reported the occurrence of unreasonably offensive odors that interfered with the use and enjoyment of their property and interfered with the enjoyment of life at their residence on April 6, 8, 9, 19, 20, 21, 22, 23, 26

and 30. See Group Exhibit B, attached hereto.

10. On April 20, 21 and 28, 2001, an individual living in the town of Williamsfield reported very offensive hog odors from The Highlands facility that caused her to close windows and otherwise modify her activities. This resident lives approximately 3 miles north of the facility. On May 1, 2001, she also reported a very strong and offensive odor at her residence coming from The Highlands facility. She stated that she cannot leave windows open at her residence because of the strong and offensive odor from The Highlands facility. See Exhibit C, attached hereto.

11. On May 14, 2001, another resident of Williamsfield experienced a very offensive odor at her residence coming from The Highlands facility that caused her to close up her house. She also reported experiencing offensive odors approximately one and a half weeks earlier coming from The Highlands facility that woke her husband during the night and forced them to close windows at their residence to prevent the offensive odor from continuing to enter their residence. See Group Exhibit D, attached hereto.

12. The Illinois EPA field office file contains documentation of field observations of off-site odors at this facility. A sample of this documentation is attached hereto as Group Exhibit E. This sample of documentation includes a field observation of off-site odor on November 13, 2002, June 25, 2002, June 19, 2002, February 7, 2002 and January 18, 2002, as well as dates in 2001.

13. Based on my 33 plus years of training and professional experience, it is my opinion that the Highlands' facility is not suitable to the site where it is located because it was built with inadequate odor control in close proximity to its neighbors given its capacity to produce and emit offensive odors. The facility stores manure in an uncovered anaerobic lagoon system, and uses a large number of exhaust fans to discharge odorous air from

buildings and pits beneath the buildings to the surrounding atmosphere. It is my opinion that the facility as constructed, with inadequate odor control for the lagoon system and buildings is unlikely to prevent neighbors from experiencing odors at an intensity and frequency that interfere with the enjoyment of their lives and properties.

14. Based on my 33 plus years of training and professional experience, it is my opinion, at the time of construction of The Highlands facility, alternative facility designs and odor control technologies that are capable of preventing the release of odors to the extent experienced during field inspections were available, and were economically reasonable and technically feasible applications for this facility.

15. Attached as Exhibit F are newspaper articles contained within the files of the Illinois EPA field office regarding the Maschhoff family pork production company.

16. Based on field observations by Illinois EPA staff, any compliance measures implemented or installed at the facility have been inadequate in preventing unreasonably offensive off-site odors.

17. Roy and Dianne Kell have refused to talk to Illinois EPA inspectors since on or about the time the settlement was signed and entered in their private nuisance lawsuit.

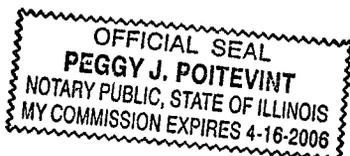
Further, Affiant sayeth not.


JAMES E. KAMMUELLER

Subscribed and sworn to before me

this 25th day of July, 2003.


NOTARY PUBLIC



MEMORANDUM

SUBJECT: KNOX COUNTY
(Near Williamsfield)

The Highlands Sow Farm, LLC.
Reconnaissance/Sampling Inspection

TO: DWPC/FOS and RU
FROM: Todd Huson, DWPC-FOS, Peoria Region
DATE: May 23, 2001

On May 22, 2001, DWPC/FOS, Peoria Field Office, received an odor complaint from Roy and Diane Kell concerning the Highlands Sow Farm. Roy stated that they have had to endure offensive odors from this facility almost every day in May.

On May 23, I performed an inspection in the area of the subject facility. I did not enter this facility (I could not contact anyone at the Baird Seed Company Office). A relatively strong off-site odor was observed downwind (east by northeast) of this swine production facility at the Roy Kell residence. I visited with the Kells, and subsequently noticed that this odor penetrated the walls of their home. The odor appeared to be a combination of anaerobic (septic) waste odor and livestock odor. I also noticed that new air dams were being constructed at the east end of the breeding and farrowing buildings (replacing the shallow straw bales dams).

trh/

CC: Peoria Files
Tim Kluge
Jane McBride, IAGO
Rich Warrington, DLC



Todd R. Huson

Affidavit of James KammueLLer
Exhibit A

JK
7-2-01

File: Murphy Family Farms, Inc.

Time and Date Received: 4:45 PM 4-7-03

Person Receiving Complaint: E. Ackerman

Routine Complaint
via Telephone

Routine Complaint
via Letter

PCB Complaint

Other

COMPLAINANT: Mrs. Del Leonard

ADDRESS: Williamsville, IL 61489

TELEPHONE NO: 639-2677

DATE OF INCIDENT: present

TIME OF INCIDENT: _____

SUSPECTED OR KNOWN SOURCE: Murphy Family Farms, Inc.
The Highlands, LLC

ADDRESS OF SOURCE: Williamsville, IL

NATURE OF COMPLAINT & ACTION TAKEN: _____

Mrs. Leonard left a voice message and reported very offensive odor on Interstate 74 resulting from Murphy Family Farms, Inc. She also stated that she experienced 3 1/2 days of stench (from the swine waste lagoons) at her residence last week.

Investigation Procedure

Routine

Contact complainant before or during investigation

Send copy of any correspondence to complainant

JEK 4/8/03

Affidavit of James Kammueller
Exhibit B

cc: - DWPC/FOS & RU - Jane McBride, IAGO
- Tom Andryk, DLC - Complaint Log

Eric Ackerman
Signed

June 2002

17 MONDAY 9:20 A TEMP 72° WIND SO

8 am 5-10 ODOR VERY STRONG - pm 1
 9 LASTED MOST OF THE DAY 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

18 TUESDAY 1:10 P TEMP. 88° WIND SO

8 am 10-15 - STRONG LASTING ODOR pm 1
 9 UNTIL MID EVENING 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

19 WEDNESDAY 2:30 P TEMP. 94° WIND

8 am SO 10-15 - STRONG ODOR ALL pm 1
 9 AFTERNOON UNTIL MID EVENING 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

MAY						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

JULY						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

June 2002

20 THURSDAY 1:

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

21 FRIDAY 1:30 P TEMP 96° WIND ^{First Day of Summer}

8 am SO. 10-15 STRONG ODOR pm 1
 9 UNTIL EVENING 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

22 SATURDAY 2:00 P TEMP. 99° WIND

SO. 15-20 - STRONG ODOR -
 HAD TO COME IN - LASTED UNTIL
 LATE IN EVENING

23 SUNDAY 2:30 P TEMP 98° WIND

SO. 10-15 - VERY STRONG ODOR
 MAKES ME NAUSEOUS - LASTED
 UNTIL 8:30-9:00 P

June 2002

10 MONDAY 11:15A TEMP 86° - WIND

8 am SO. 15-20 MPH - BDR VERY STRONG

9 HAD TO COME IN @ 4:30P. TEMP 89°

10 WIND SAME - STILL BAD ORDER

11 _____

12 noon _____

11 TUESDAY

8 am _____ pm 1

9 _____ 2

10 _____ 3

11 _____ 4

12 noon _____ 5

12 WEDNESDAY

8 am _____ pm 1

9 _____ 2

10 _____ 3

11 _____ 4

12 noon _____ 5

MAY						
S	M	T	W	T	F	S
		1	2	3	4	
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

JULY						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

June 2002

13 THURSDAY

8 am _____ pm 1

9 _____ 2

10 _____ 3

11 _____ 4

12 noon _____ 5

14 FRIDAY

Flag Day

8 am _____ pm 1

9 _____ 2

10 _____ 3

11 _____ 4

12 noon _____ 5

15 SATURDAY

16 SUNDAY

Father's Day

May 2002

27 MONDAY Memorial Day

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

28 TUESDAY 8:00 P TEMP 74° - WIND

8 am SO. 0-5 MPH - ODOR VERY pm 1
 9 STRONG + HEAVY - HAS PENE- 2
 10 TRATED INTO GARAGE - HAD 3
 11 TO COME IN QUICKLY 4
 12 noon _____ 5

29 WEDNESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

APRIL						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

JUNE						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

May / June 2002

30 THURSDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

31 FRIDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

1 SATURDAY

2 SUNDAY

May 2002

6 MONDAY 10:30A TEMP. 62° - WIND

8 am SO. 5-10 MPH - STRONG pm 1

9 ODOR - CAME IN - DOGS DIDN'T

10 LIKE IT 3

11 4

12 noon 5

7 TUESDAY

8 am pm 1

9 2

10 3

11 4

12 noon 5

8 WEDNESDAY

8 am pm 1

9 2

10 3

11 4

12 noon 5

APRIL						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

JUNE						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

May 2002

9 THURSDAY

8 am pm 1

9 2

10 3

11 4

12 noon 5

10 FRIDAY 8:30 P TEMP 55° WIND 0-5

8 am SO. SMELL VERY BAD - DOGS pm 1

9 DIDNT LIKE IT - LASTED UNTIL 2

10 VERY LATE & EARLY MORNING 3

11 4

12 noon 5

11 SATURDAY

12 SUNDAY 10:15A TEMP 50° Mother's Day

WIND 10-15 - STRONG ODOR - HAD

TO COME IN QUICKLY - DOGS

DIDNT LIKE IT

April/May 2002

29 MONDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

30 TUESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

1 WEDNESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

MARCH						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

MAY						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

May 2002

2 THURSDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

3 FRIDAY 10:30P TEMP 55° WIND SO.

8 am 5-10MPH - SMELL VERY STRONG - pm 1
 9 COULDN'T STAY OUT 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

4 SATURDAY

_____ pm 1
 _____ 2
 _____ 3
 _____ 4
 _____ 5

5 SUNDAY 12:30P TEMP 82° WIND SO.

15-20 - SMELL VERY STRONG - HAD
 TO COME IN - 4:30P TEMP 84° WIND - SAME
 STILL STINKS

April 2002

15 MONDAY 2:15P TEMP 80° WIND SO.

8 am 10-15 MPH - SMELL VERY BAD - HAD

9 TO COME IN - ODOR BAD UNTIL 2

10 LATE IN EVENING 3

11 _____ 4

12 noon _____ 5

16 TUESDAY 9:30A TEMP 82° WIND SO.

8 am ~~15:25~~ ~~15:20~~ - ODOR VERY STRONG pm 1

9 ODOR LASTED UNTIL 11:30 P 2

10 _____ 3

11 _____ 4

12 noon _____ 5

17 WEDNESDAY 2:10P TEMP 80° WIND

8 am SO. 10-20 - STRONG ODOR - pm 1

9 COULDN'T WORK OUTSIDE - HAD 2

10 TO COME IN 3

11 _____ 4

12 noon _____ 5

MARCH						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

MAY						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

April 2002

18 THURSDAY 12:10P TEMP 92° WIND

8 am SO. 10-20 - ODOR VERY STRONG - COULDN'T

9 STAY OUTSIDE - HAD TO COME IN 2

10 _____ 3

11 _____ 4

12 noon _____ 5

19 FRIDAY

8 am _____ pm 1

9 _____ 2

10 _____ 3

11 _____ 4

12 noon _____ 5

20 SATURDAY

21 SUNDAY

April 2002

8 MONDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

9 TUESDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

10 WEDNESDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

MARCH						
S	M	T	W	T	F	S
				1	2	
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

MAY						
S	M	T	W	T	F	S
		1	2	3	4	
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

April 2002

11 THURSDAY 8:10 A TEMP 47° WIND S. 10-15

8 am ODOR SMELL WAS AROUND pm 1
9 ALL DAY - TEMP. GOT TO 75° 2
10 WIND STAYED ABOUT THE SAME 3
11 COULDN'T STAY OUTSIDE - HAD TO COME 4
12 noon IN - ODOR LASTED UNTIL ABOUT 5
9:30 P

12 FRIDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

13 SATURDAY 6:30 P TEMP 65° WIND 10-15^{SS}

SMELL VERY BAD - HAD TO COME IN

14 SUNDAY 2:15 P TEMP 76° WIND S. 10-15

ODOR VERY STRONG - COULDN'T WORK
OUTSIDE - HAD TO CLOSE WINDOWS IN
HOUSE - ODOR STILL AROUND AT
9:30 P

March 2002

11 MONDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

12 TUESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

13 WEDNESDAY 7:30A TEMP 44° WIND

2 am SA, 10-15 - SMELL VARY BAD - TAKING
 → DOGS OUT - THEY DIDN'T LIKE IT - HAD
 TO COME IN QUICKLY - SMELL GOT
 INTO GARAGE - NAUSEATING
 4
 12 noon _____ 5

FEBRUARY						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

APRIL						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

March 2002

14 THURSDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

15 FRIDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

16 SATURDAY

17 SUNDAY

St. Patrick's Day

February 2002

18 MONDAY *President's Day*

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

19 TUESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

20 WEDNESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

JANUARY						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

MARCH						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

February 2002

21 THURSDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

22 FRIDAY 7:00 P TEMP. 35° - WIND

8 am SO. 10-15 - SMELL VERY BAD - pm 1
 9 METER READING .02 - SMELL 2
 10 PERMEATED GARAGE 3
 11 _____ 4
 12 noon _____ 5

23 SATURDAY

24 SUNDAY

February 2002

11 MONDAY 12:45 P - TEMP 40° - WIND
 8 am SO. S-10 - SMELL VERY STRONG pm 1
 9 HAD TO COME IN 2
 10 3
 11 4
 12 noon 5

12 TUESDAY Lincoln's Birthday

8 am pm 1
 9 2
 10 3
 11 4
 12 noon 5

13 WEDNESDAY Ash Wednesday

8 am 7:30 P - TEMP. 30° - WIND SO. pm 1
 9 10-15 MPH. - STENCH VERY STRONG - 2
 10 LEACHED INTO GARAGE - MADE 3
 11 ME NAUSEATED 4
 12 noon 11:30 P - STILL SAME 5

JANUARY						
S	M	T	W	T	F	S
	1	2	3	4	5	
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

MARCH						
S	M	T	W	T	F	S
						1 2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

February 2002

14 THURSDAY Valentine's Day

8 am 9:00 A - TEMP. 30° - WIND SO. pm 1
 9 10-15 MPH - STINK VERY STRONG 2-
 10 NAUSEATING - 12:30 P - SAME EX 3
 11 CEPT TEMP. 48° - 3:00 P - SAME. TEMP 4
 12 noon 11:55 P - SAME EXCEPT TEMP. 34° 5
 WIND - SO. 6-8 MPH

15 FRIDAY

8 am pm 1
 9 2
 10 3
 11 4
 12 noon 5

16 SATURDAY

17 SUNDAY

February 2002

4 MONDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

5 TUESDAY 7:00 P - TEMP 36 - WIND

8 am RELATIVELY CALM - SMELL VERY pm 1
 9 STRONG - HAD TO COME IN QUICKLY 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

6 WEDNESDAY 11:00 A TEMP. 40 -

am WIND VERY LIGHT - STENCH pm 1
 VERY STRONG - COULDN'T STAY 2
 OUT - MADE ME NAUSEATED 3
 _____ 4
 noon _____ 5

JANUARY						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

MARCH						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

February 2002

7 THURSDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

8 FRIDAY 2:00 P - TEMP 60 - WIND

8 am SO. 0-5 MPH - SMELL VERY pm 1
 9 STRONG - GOT NAUSEATED - 2
 10 CAME INTO HOUSE 3
 11 _____ 4
 12 noon _____ 5

9 SATURDAY

10 SUNDAY

Telephone conversation 7/9/01 11am SLW

Leonard's Complaints

June 2001

11 ~~8~~th 1:30-4:45 pm 95° Wind S10-15
-stink very bad

9:15pm 80°
-Smell very bad; dogs will not go outside house

13th 7:15am - 2:45pm 80° Wind S10-15
Smelled very bad w/ strong odor

14th 10am 80° 510-15
-cutting grass - smell so bad had to come in

5:50pm 89°
-smelled very bad

May 2001

21 MONDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

22 TUESDAY 9:30P WIND SOUTH 5-7 MPH
 TEMP. 51° - SAM & SKIBS (T+4)
 8 am ~~MADE COMMENT THAT A DEAD~~ pm 1
 9 SKUNK SMELLED BETTER THAN 2
 10 PIGS - 11:05P TEMP 50° WIND 3
 SOUTH 5 MPH - SMELL QUITE 4
 11 STRONG - HAD TO COME IN 5
 12 noon WITH DOGS

23 WEDNESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

APRIL						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

JUNE						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

May 2001

24 THURSDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

25 FRIDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

26 SATURDAY

27 SUNDAY

May 2001

14 MONDAY 3:45P TEMP 83° WIND
 8 am SOUTH 5-15 MPH - SMELL VERY
 9 STRONG - HAD TO COME IN ^{pm 1}
 GOT NAUSEATED - 7:30P - TEMP
 10 78° WIND 5-10 MPH (SO.) SMELL
 11 STILL VERY STRONG + NAUSEATING
 12 noon _____ 5

15 TUESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

16 WEDNESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

APRIL						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

JUNE						
S	M	T	W	T	F	S
						1 2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

May 2001

17 THURSDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

18 FRIDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

19 SATURDAY

20 SUNDAY

May 2001

7 MONDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

8 TUESDAY 10:45 P TEMP 63° WIND

8 am SOUTH 5 MPH - SMELL VERY
 9 STRONG - DOGS WANTED TO
 10 COME IN - SO DID I. - HAD TO
 11 CLOSE WINDOWS. 4
 12 noon _____ 5

9 WEDNESDAY 11:30 A TEMP 73° WIND

8 am SOUTH 10-15 MPH - ODOOR GOT BAD
 9 AT TIMES - FORCED ~~ME~~ US INSIDE
 10 2:45 P TEMP 86° WIND SO 10-15
 ODOOR VERY BAD 5:00 P
 11 STILL SMELLING VERY BAD
 12 noon _____ 5

APRIL						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

JUNE						
S	M	T	W	T	F	S
						1 2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

May 2001

10 THURSDAY 7:30 A TEMP 70° WIND

8 am SOUTH 10-12 MPH - SMALL VERY
 9 BAD - HAD TO COME IN
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

11 FRIDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

12 SATURDAY

13 SUNDAY 6:50 P TEMP 68° Mother's Day

WIND SOUTH 2-5 MPH - GUESTS
 CAUGHT ODOOR - COULDN'T STAY OUTSIDE
 HAD TO COME IN

May 2001

7 MONDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

8 TUESDAY 10:45 P TEMP 63° WIND

8 am SOUTH 5 MPH - SMELL VERY
 9 STRONG - DOGS WANTED TO
 10 COME IN - SO DID I. - HAD TO
 11 CLOSE WINDOWS. 4
 12 noon _____ 5

9 WEDNESDAY 11:30 A TEMP 83° WIND

8 am SOUTH 10-15 MPH - ODOR GOT BAD
 9 AT TIMES - FORCED US INSIDE
 10 2:45 P TEMP 86° WIND SO 10-15
 ODOR VERY BAD - SLEPT
 11 STILL SMELLING VERY BAD
 12 noon _____ 5

APRIL						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

JUNE						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

May 2001

10 THURSDAY 7:30 A TEMP 70° WIND

8 am SOUTH 10-12 MPH - SMELL VERY
 BAD - HAD TO COME IN pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

11 FRIDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

12 SATURDAY

13 SUNDAY

Mother's Day

May 2001

7 MONDAY

8 am _____ pm 1
 _____ 2
 9 _____ 3
 10 _____ 4
 11 _____ 5
 12 noon _____

8 TUESDAY 10:45 P TEMP 63° WIND

8 am SOUTH 5 MPH - SMELL VERY
 9 STRONG - DOGS WANTED TO
 10 COME IN - SO DID I. - HAD TO
 11 CLOSE WINDOWS. _____ 4
 _____ 5
 12 noon _____

9 WEDNESDAY

8 am _____ pm 1
 _____ 2
 9 _____ 3
 10 _____ 4
 11 _____ 5
 12 noon _____

APRIL						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

JUNE						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

May 2001

10 THURSDAY

8 am _____ pm 1
 _____ 2
 9 _____ 3
 10 _____ 4
 11 _____ 5
 12 noon _____

11 FRIDAY

8 am _____ pm 1
 _____ 2
 9 _____ 3
 10 _____ 4
 11 _____ 5
 12 noon _____

12 SATURDAY

13 SUNDAY

Mother's Day

April / May 2001

30 MONDAY TEMP. 86° WIND SOUTH

8 am 25-30 MPH - 3:00 PM - SMELL pm 1

9 STRONG - COULDN'T WORK OUTSIDE

10 HAD TO COME IN 3

11 7:10 P TEMP 84° WIND SO. 20-30 MPH 4

12 1:15 P TEMP 76° WIND SO. 20-25 MPH 5

CAME IN HOUSE - STENCH VERY BAD

1 TUESDAY 8:10 A TEMP. 74° WIND SO.

8 am 15-20 MPH - GOT SICK - NAUSEATED pm 1

9 2:30 P TEMP. 83° WIND SO. 20-25 MPH

SMELL VERY STRONG - 3:20 P TEMP 3

85° WIND 20-25 MPH - 5:30 P

* TEMP 85° - WIND 25 MPH - 7:20 P 4

12 noon TEMP 82° - WIND 20-25 MPH 5

8:30 P TEMP 79° - WIND 15-20 MPH

SMELL VERY STRONG -

~~TUESDAY~~ ALL DAY - COULD NOT

8 am STAY OUTSIDE - GOT NAUSEOUS pm 1

HAD TO COME IN

WEDNESDAY - 5-2 = ODOR ALL DAY - SMELL

10 VERY BAD - TEMP. IN 80'S - 3

WIND SOUTH 20-25 MPH - COULD

11 NOT BE OUTSIDE - SMELL LASTED 3

12 UNTIL 8:00 OR 8:30 P 5

MARCH						
S	M	T	W	T	F	S
			1	2	3	
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

MAY						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

May 2001

3 THURSDAY 8:30 A TEMP 74° WIND

8 am SO. 15-20 MPH - SMELL BAD - HAD TO

COME IN = 10:00 A TEMP 83° pm 1

9 WIND 20-25 MPH SOUTH = 10:50 A

10 TEMP 88° WIND SOUTH 20-25 MPH - SMELL

11 BAD - CAME IN AGAIN

2:30 P TEMP 88° WIND SO. 20-25 MPH

12 noon SMELL VERY BAD - GOT NAUSEOUS 5

CAME IN AGAIN

4 FRIDAY

8 am _____ pm 1

9 _____ 2

10 _____ 3

11 _____ 4

12 noon _____ 5

5 SATURDAY

6 SUNDAY 3:30 P TEMP 76° WIND SOUTH

25-30 MPH - SMELL VERY STRONG -

NAUSEATING - HAD TO COME IN

Leonards

April 2001

16 MONDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

17 TUESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

18 WEDNESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

MARCH						
S	M	T	W	T	F	S
			1	2	3	
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

MAY						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

April 2001

19 THURSDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4

12 noon 2:05 - Temp mid 70s Wind S 10-15 MPH

Moderate to steady presence occasionally surges of odor

20 FRIDAY 6:30 P TEMP 76° - WIND

8 am SOUTH 15-20 ^{WENT} - OUTSIDE ^{TO DO} _____ pm 1

9 CHORES - SMELL MADE IT DIFFICULT

10 TO BREATHE - HAD TO COME IN (JACK)

11 7:00 PM 74° Wind S 10 MPH - 15 Smell

12 noon In garage (doors, windows closed, not open at all)

9:25 PM 68° Wind S 20 MPH Constant with

fluctuations of intensity on W side of property

rather strong with no lack of presence.

SATURDAY - 21 = 9:30 A

TEMP 74° WIND SOUTH 25 MPH -

SMELL VERY STRONG - COULD NOT

WORK OUTSIDE - HAD TO COME IN

22 SUNDAY 5:20 P - TEMP 80° - WIND

SO, 20-25 MPH - SMELL VERY

STRONG - HAD TO COME IN - DOGS DID

NOT WANT TO GO OUT

April 2001

9 MONDAY 1:00 A TEMP. 65°
8 am WIND SO. 25-30 MPH. pm 1
9 OPENED BEDROOM WINDOW 2
10 SMELL VERY BAD-STRONG- 3
11 HAD TO IMMEDIATELY 4
12 noon CLOSE WINDOW 5

10 TUESDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

11 WEDNESDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

MARCH						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

MAY						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

April 2001

12 THURSDAY
8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

13 FRIDAY

Good Friday

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

14 SATURDAY

15 SUNDAY

Easter Sunday

April 2001

2 MONDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

3 TUESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

4 WEDNESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

MARCH						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

MAY						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

April 2001

5 THURSDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

6 FRIDAY 12:30 A TEMP. 62°

8 am WIND SO. 10-15 MPH pm 1
 9 SMELL STRONG - TAKING 2
 10 DOGS OUT - THEY DID NOT 3
 11 WANT TO STAY OUT + DO WHAT 4
 12 noon THEY WERE SUPPOSED TO, 5
 CAME BACK IN

~~7 SATURDAY~~ 6:30 A - TEMP 60°

WIND SO. 2-3 MPH - SMELL
 STILL VERY STRONG - AGAIN
 GOT NAUSEATED - DOGS WANTED
 TO COME IN

8 SUNDAY Palm Sunday, First Day of Passover

12:30 P TEMP 74° WIND
 SO - 8-10 MPH - SMELL VERY
 STRONG - CAME BACK IN
 HOUSE - 3:15 P TEMP 80° WIND
 SO. 10-15 MPH. - 5:30 P TEMP 80°
 WIND SO. 10-15 MPH - VERY BAD ODOR

March 2001

26 MONDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

27 TUESDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

28 WEDNESDAY

8 am 5:30 P TEMP 46° SO. WIND
9 10-15 MPH - SMELL VERY
10 STRONG - GUT NAUSEATED
11 _____ 4
12 noon _____ 5

FEBRUARY						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

APRIL						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

March/April 2001

29 THURSDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

30 FRIDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

31 SATURDAY

1 SUNDAY

March 2001

19 MONDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

20 TUESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

21 WEDNESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

FEBRUARY						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

APRIL						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

March 2001

22 THURSDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

23 FRIDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

24 SATURDAY

25 SUNDAY 1:40 P. TEMP. 30° -

WIND NO. 10-15 MPH - JOE BROCK,
 FRIEND, TRAVELLING ON I 74
 STATED THE STENCH WAS SO
 BAD, THEY GOT SICK IN THE
 CAR - HIS WIFE SAID SHE ~~THE~~
 DIDN'T KNOW HOW ANYONE COULD
 STAND LIVING NEAR THERE

March 2001

5 MONDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

6 TUESDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

7 WEDNESDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

FEBRUARY						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

APRIL						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

March 2001

8 THURSDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

9 FRIDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

10 SATURDAY TEMP. 57° WIND SOUTH 10-15
1:45 P SMALL STRONG -
NAUSEATING - HAD TO COME IN
GOT HEADACHE

11 SUNDAY

JANE MCBRIDE

HERE ARE 3 MORE DAYS THAT WE'VE SMELLED
THE PIG FACTORY. I'M SURE THERE ARE MANY
WE MISS

DELL LEONARD
2195 KNOX HWY. 11
WILLIAMSFIELD, ILL 61489

February 2001

26 MONDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

27 TUESDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

28 WEDNESDAY

Ash Wednesday

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

JANUARY, 2001						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

MARCH						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

March 2001

1 THURSDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

2 FRIDAY

8 am _____ pm 1
9 _____ 2
10 _____ 3
11 _____ 4
12 noon _____ 5

3 SATURDAY

4 SUNDAY 2:00 P.M. TEMP. 40° ^{LIGHT} NORTH
WIND - ON INT. 74 ODOR
HEAVY - STRONG - LINGERING -
NAUSEATING - REPORTED BY
TIM LEONARD + FRANCES MARILYN
(SON)

January 2001 LIGHT SOUTH

22 MONDAY TEMP. 29 ~~WIND~~

8 am S.OOP - SMELL STRONG - pm 1
 9 (LIKE IN THE MIDDLE OF A DOG
 10 FART) HAD TO COME IN 3
 11 _____ 4
 12 noon _____ 5

23 TUESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

24 WEDNESDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

DECEMBER, 2000						
S	M	T	W	T	F	S
				1	2	
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

FEBRUARY						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

January 2001

25 THURSDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

26 FRIDAY

8 am _____ pm 1
 9 _____ 2
 10 _____ 3
 11 _____ 4
 12 noon _____ 5

27 SATURDAY

_____ pm 1
 _____ 2
 _____ 3
 _____ 4
 _____ 5

28 SUNDAY

_____ pm 1
 _____ 2
 _____ 3
 _____ 4
 _____ 5

Murphy Family Farms, Inc
(Knox County)

Illinois Environmental Protection Agency
Citizen Pollution Complaint

Please print and complete
as much information as possible

Office Use Only
ID Number _____

Chris Hasselbacher
Name

309-639-2225
Home Telephone Number

1383 IL Rt. 180
Address

309-639-2294 (Work)
Daytime Telephone Number

Williamsville, IL 61489
City, State, Zip

Do you consent to Illinois EPA disclosing your
identity as complaining party? Yes No

Cause of Problem: (check one)

- Air Pollution
- Waste Handling
- Water Pollution
- Drinking Water

If you checked drinking
water, from which
utility do you receive
water? _____

Suspected or Known Source:

Baird Hog Farm
Name

RR
Address

Williamsville, IL 61489
City, State, Zip

Briefly describe problem Very offensive odor, hog odor
obviously.

*I have many more dates written on my calendar, I will continue
to keep track. Thank you.*

If you remember specific times
when the problem occurred, please
list time of day and date

Time	Date
<u>All Day</u>	<u>4-20-01</u>
<u>All Day</u>	<u>4-21-01</u>
<u>AM!</u>	<u>4-28-01</u>

It is getting much worse as it warms up.
Has this problem affected your health? Yes No If so, please explain _____

*It has yet to affect my health but changes my way of life by causing
me to close my windows.*
Have you consulted a doctor? Yes No

Has the problem damaged your property? Yes No
If so, describe your property damage _____

Affidavit of James Kammuller
Exhibit C

Do you have photos, a written record
or other evidence of pollution? Yes No

Have you filed a claim
against the responsible party? Yes No

Have you ever worked for the suspected

Have you contacted the source and

IEPA
PEORIA REGION - DWPC
COMPLAINT RECEIVED

Knox County

FILE: Murphy Family Farms, Inc.

XX Complaint
via phone

DATE/TIME RECEIVED:	5/1/01	4:33 PM
----------------------------	--------	---------

COMPLAINANT:	Mrs. Chris Hasselbacher
ADDRESS:	1383 Illinois Route 180
	Williamsfield, IL 61489
TELEPHONE #:	(309) 639-2225 home 639-2294 work

SUSPECTED OR KNOWN SOURCE:

Murphy Family Farms, Inc./The Highlands, LLC
Knox Road 1100 N
Williamsfield, IL 61489

NATURE OF COMPLAINT & ACTION TAKEN: _____

I returned a call to complainant on 5/2/01. (This is apparently the first contact complainant has had with this office.) Mrs. Hasselbacher reported a very strong and offensive odor at her residence on May 1, 2001. She cannot leave windows open at her residence because of the strong and offensive odor. Complainant stated that the odor is coming from Murphy Family Farms, Inc. swine operation. Complainant's residence is approximately 3 miles north of the swine facility. Mrs. Hasselbacher indicated that she has kept some written records of the dates when the offensive odor from the swine facility was present at her residence. I advised her to keep records and forwarded complaint forms.


Signed

cc: -IEPA/DLC
-Jane McBride, IAGO
-DWPC/FOS & RU

a:\livestck\murphy\complt_37.01

JEC

IEPA
PEORIA REGION - DWPC
COMPLAINT RECEIVED

Knox County

FILE: Murphy Family Farms, Inc.

XX Complaint
via phone

DATE/TIME RECEIVED: 5/15/01 9:11 AM

COMPLAINANT:	Mrs. Joyce Martin
ADDRESS:	227 Oak Street
	Williamsfield, IL 61489
TELEPHONE #:	(309) 639-2606

SUSPECTED OR KNOWN SOURCE:

Murphy Family Farms, Inc./The Highlands, LLC

Knox Road 1100 N

Williamsfield, IL 61489

NATURE OF COMPLAINT & ACTION TAKEN: _____

Mrs. Martin reported a very offensive odor at her residential property in Williamsfield during the previous evening, May 14, 2001. Mrs. Martin stated that the odor was coming from Murphy Family Farms, Inc. swine facility located south of Williamsfield. Mrs. Martin was forced to close up her house because of the odor. She stated that she wanted to have the windows of her residence open and enjoy the fresh air but was not able to do so because of the very strong and offensive odor from Murphy Family Farms, Inc. swine operation.

Complainant also reported very offensive odors at her residence approximately 1 ½ weeks ago. According to Mrs. Martin the swine farm odor from Murphy Family Farms, Inc. was so strong that it woke up her husband during the night. He was forced to close the windows of their residence to prevent the offensive odor from continuing to enter their residence. Mrs. Martin reported that the terrible odor was still present the following morning and then again in the evening. This resulted in terrible odors two consecutive nights according to Mrs. Martin.

Complainant was advised to maintain written records of the odor incidents.



Signed

cc: -IEPA, DLC
-Jane McBride, IAGO
-DWPC/FOS & RU

Affidavit of James Kammuller
Exhibit D

a:\livestck\murphy\complt_40.01

JLK

CC: JANE McBRIDE
 DLC
 RW
 LOG
 ORIG: PEORIA

Offensive Odor Log

Facility Name/Odor Source: Bairds Hog Factory
Williamsfield, Il.

Date of Offensive Odor	Time (approx.)	Comments (describe odor, note any impact on enjoyment of property, i.e. unable to be outdoors, need to close windows, run AC, canceled event, etc., use additional paper if needed.)
6-10-01	A.M.	Could not sit outside
7-8-01	A.M. P.M.	Humid air that made odor worse.
7-12-01	P.M.	Very strong, Could not be outside
7-21-01	P.M.	Strong odor, but + humid
8-24-01	P.M.	Cloudy + humid.
<p>There was a time at night when we had the house open and the odor was so strong the air had to be turned on to get rid of the odor. Not all times are on this record, its only a partial report.</p>		

Name: Joyce MARTIN

Date: 8-31-01

Signature: Joyce Martin
227 Oak - Box 356
Williamsfield, Il.
61489

Mail to: IEPA
 5415 N. University
 Peoria, IL 61614

Illinois Environmental Protection Agency

Field Report

File: Murphy Family Farms, Inc./ The Highlands, LLC	County: Knox
Date: November 13, 2002	Near: Williamsfield
To: DWPC/FOS & RU	
Synopsis/Narrative: <p>At approximately 3:30 PM on the above date I conducted a reconnaissance visit at Murphy Family Farms, Inc./Highlands, LLC near Williamsfield. Weather conditions were partly cloudy, with wind out of the southwest and a temperature of about 60⁰F. Photographs are attached. Video photography was also utilized.</p> <p>Wastewater Irrigation Swine wastewater from the lagoon system was being irrigated on cropland immediately west of the lagoons. The traveling irrigation gun was applying wastewater to the northeast quadrant of the 80 acre field located west of the lagoons. I observed two distinct leaks in the supply pipe positioned between the lagoons and the hose reel. Wastewater was discharging from the supply pipe. The irrigation appeared to have been operating for several hours. Saturation of the field in the location of the leaks can lead to wastewater draining off-site.</p> <p>Off-site Odor A strong swine waste odor was observed while on the gravel road immediately northeast of the facility. The odor was coming from Murphy Family Farms, Inc./Highlands, LLC.</p> <p>Sometime following the field visit I contacted Doug Baird by telephone and advised him to repair the leaks in the wastewater irrigation pipe.</p> <p>This report is submitted for your information.</p>	
Illinois EPA Division of Water Pollution Control Peoria Regional Office	Author: <i>Eric Ackerman</i>

Att: -Photographs
cc: -Tom Andryk, DLC
-Jane McBride, IAGO
-Peoria Files

Affidavit of James Kammueler
Exhibit E

a:\livestock\murphyfieldreport3.02.doc

JJK
11-27-02

Murphy Family Farms, Inc. /The Highlands, LLC

Knox County

November 13, 2002

(IEPA-FOS-Peoria/Eric O. Ackerman)

Photograph #1.

The traveling gun
irrigation unit is
in operation.

View is south.



Photograph #2.

The traveling gun
irrigation unit is
in operation.

View is south.



Murphy Family Farms, Inc./The Highlands, LLC
Knox County
November 13, 2002

Photograph #3.
The traveling gun irrigation unit is in operation. The swine confinement buildings are seen in the background. View is east.



Photograph #4.
The traveling gun irrigation unit is in operation. The swine confinement buildings are seen in the background. View is east.



Inspection Report

Subject: KNOX COUNTY (Near Williamsfield) -Murphy Family Farms, Inc./The Highlands, LLC
Follow Up Inspection/Manure Release

To: DWPC/FOS & RU

From: Eric O. Ackerman DWPC-FOS, Peoria Region

Date: June 25, 2002

On the above date, Todd Huson and I returned to Murphy Family Farms, Inc./The Highlands, LLC swine facility south of Williamsfield to follow up on the recent manure release. The purpose was to further examine the flow path from the irrigation field serving the swine facility. During the inspection, Lester Carr and Gaileen Roberts were contacted. Samples were also collected from various locations with laboratory (analytical) results provided in Table 1. Refer to the attached drawings and photographs for additional details. Weather conditions were very hot and humid with a temperature above 80°F. The following paragraphs report details of the field visit.

Off-site Odor Observations

Strong, offensive odors were noted at 12:20 PM while on the gravel road (1100N) just north of the swine facility. The odors were coming from Murphy Family Farms, Inc./The Highlands, LLC.

Concrete Headwall Structure

A concrete headwall structure is located north of the Carr residence as shown in previous drawings. The structure is in the S ½, Section 10, T10N; R4E (Elba Township) in Knox County being about ¾ mile south of the irrigation field involved in the manure release. Two field tiles outlet at the headwall forming a stream which is an unnamed tributary to French Creek. Samples were collected from the northern tile discharge at two different times, 9:56 AM and 1:36 PM on the above date. Additional details regarding the sampling are described under Station X and Station X-1.

Approximately 30 feet north (upstream) of the headwall structure a blow-out (eroded opening) was noted in the waterway. At this point, an 8-inch diameter clay tile line was exposed at a depth of a few feet below grade. Todd Huson and I walked north from the headwall structure to Interstate 74, examining the drainage path. The path of the buried field tile was followed north to Interstate 74.

Private Well

The private well serving the Lester Carr residence was examined and sampled on the above date. This well is located adjacent to the unnamed tributary to French Creek and is about 1/8 – 1/4 mile downstream from the concrete headwall structure.

It is hand dug and brick lined being about 8 feet in diameter with a reported total depth of approximately 12 feet. The well is 33 feet from the stream and is bordered on at least two sides by the stream as shown in Figure 1. Depth to water table was measured at 3 feet, 8 inches.

JKC
7/15/02

The well is in the S ½, SE ¼, Section 10, T10N, R4E in Knox County. It is located in a cattle pasture and is approximately 75 yards northeast of the Carr residence. Water pumped from the well is also used to water horses and other farm animals. (See Figures 1 and 2 for additional details of the private well.)

Sample Collection

Station X (9:56 AM June 25, 2002):

Station X identifies a sample collected from the tile outlet at the concrete headwall structure. This tile outlets from the north and drains south into an unnamed tributary to French Creek. An approximate 10-inch diameter opening exists at the headwall. A 10-inch diameter corrugated metal pipe extends below grade, behind the headwall. An 8-inch diameter clay tile is connected to the corrugated metal pipe. Flow from the 10 inch opening was estimated at 75 gpm. The flow was slightly turbid with a light brownish color.

Station X-1 (1:36 PM June 25, 2002):

Station X-1 identifies a second sample collected from the 10-inch diameter opening at the concrete headwall structure. At this time the discharge was clear at a rate of about 75 gpm.

Station W (1:20 PM June 25, 2002):

Station W identifies a sample collected from the private well serving the Carr residence. The well is located adjacent to the small stream being about 75 yards northeast of the residence. Liquid in the well was clear.

June 18, 2002 Photographs

Gaileen Roberts provided photographs of the small stream near her residence. The photographs were taken during the afternoon of Tuesday, June 18, 2002 and are attached to this report.

This report is submitted for your information.

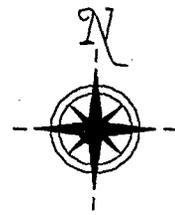


Eric O. Ackerman

Att: -Figure 1
-Figure 2
-Laboratory Sheets
-Photographs
-Table 1

cc: -Tom Andryk, DLC
-Jane McBride, IAGO
-Peoria Files

S 1/2
Section 10
T10N, R4E
Knox County
Eric O. Ackerman
June 25, 2002



*Unnamed Tributary to
French Creek*

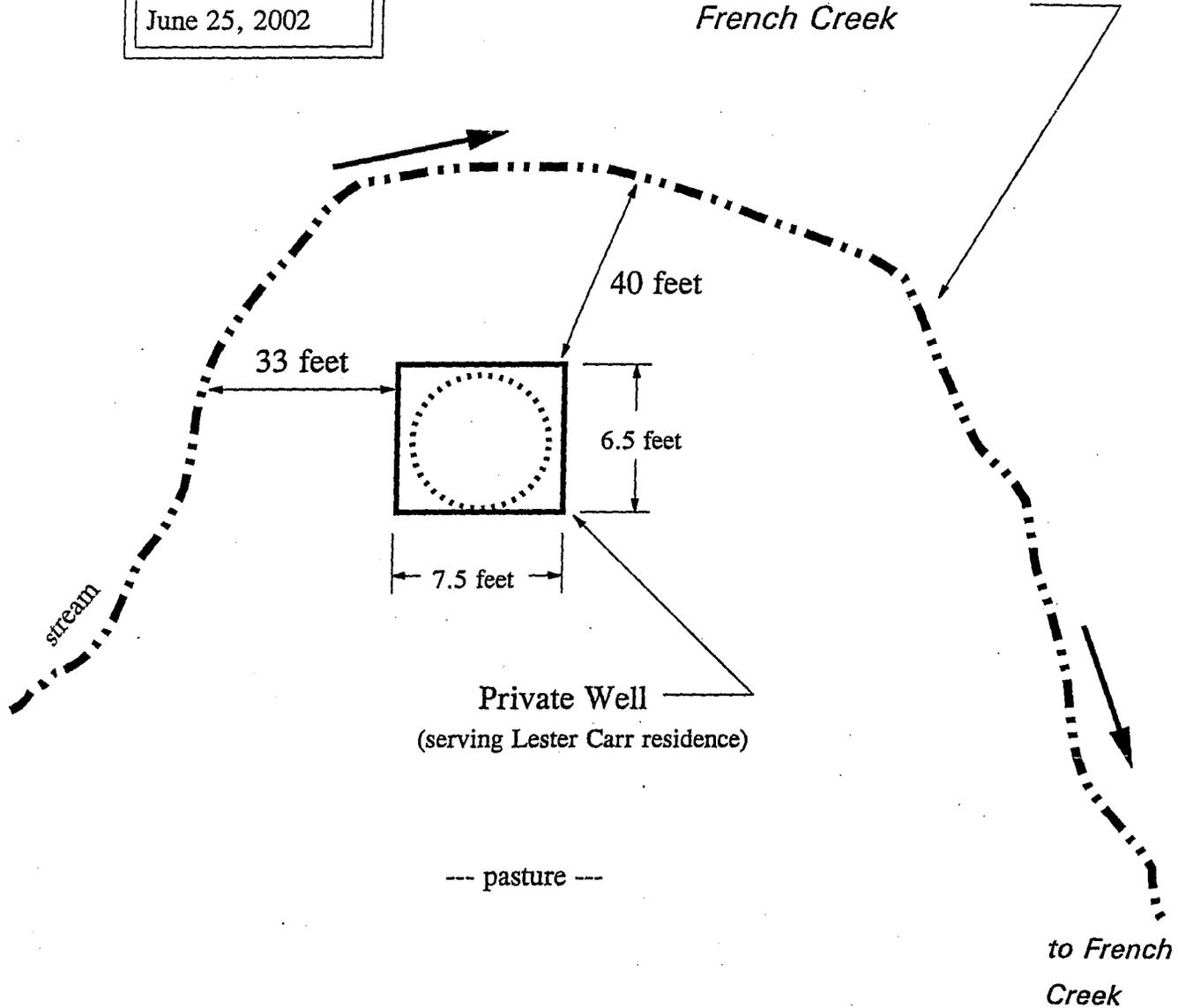


Figure 1. Plan View of Private Well near Unnamed Tributary to French Creek in Knox County on June 25, 2002.

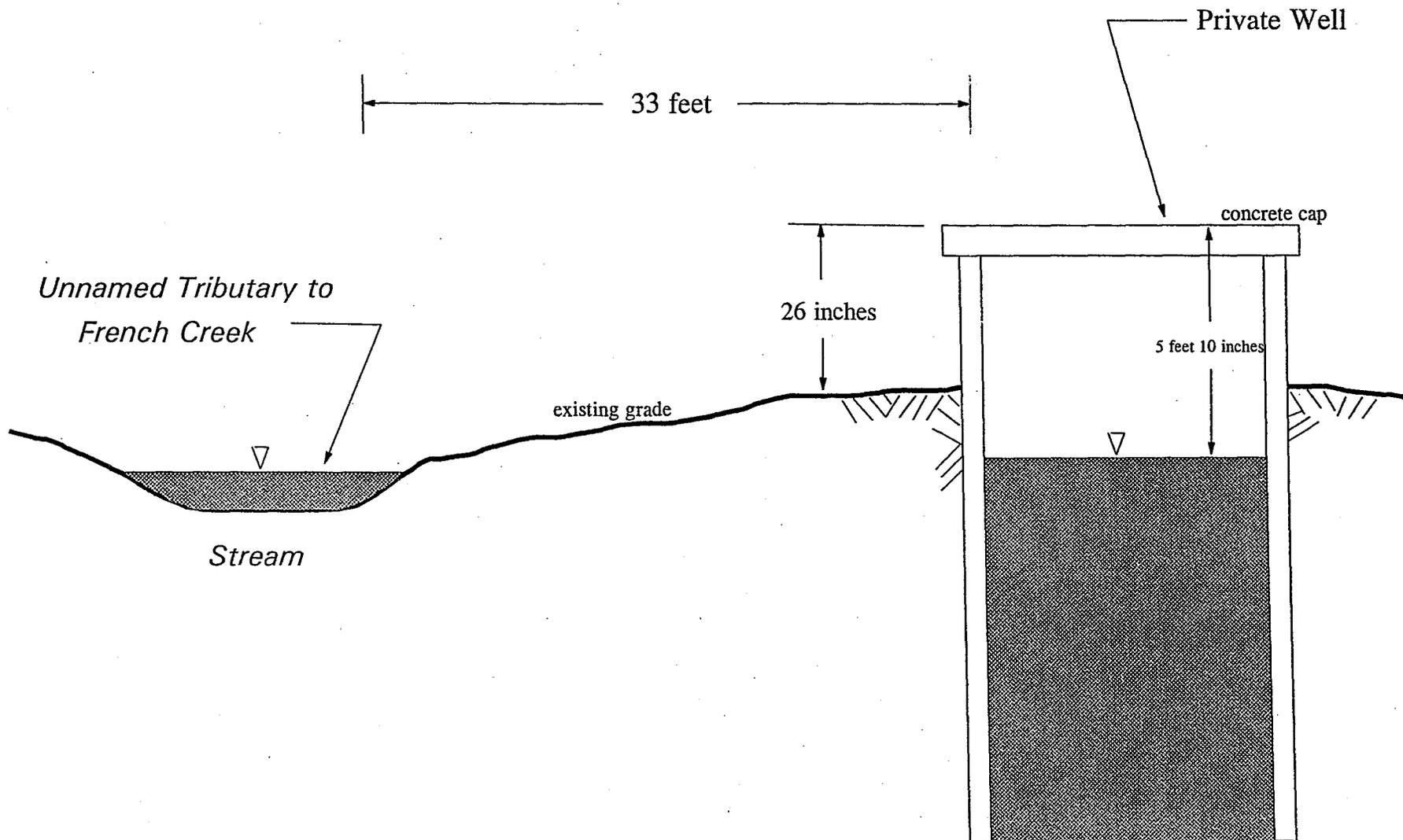


Figure 2. Cross Sectional View of Lester Carr Private Well and Unnamed Tributary to French Creek in Knox County on June 25, 2002.

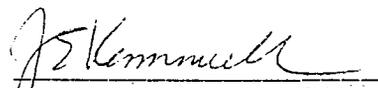
3. Solids Separator Project: A Russell brand screen made in Belgium was piloted for two hours in March 2002 by Biosun, working with Brown & Caldwell Engineers of Minnesota. These consultants feel a nine-month, full-scale study is needed. Doug Baird feels screens are too expensive. This 25-micron screen reportedly produced a 10 percent solids slurry. Mr. Paterson felt a 5- to 10-micron size screen would be required. IEPA was not notified of the pilot project nor given an opportunity to view it. Reportedly, percent solids and BOD were the only tests performed during this pilot work.

4. Lagoons: Both were pink and odorous - septic putrid odor and ammonia odors noted. Ammonia odors appeared strong and more continuous from the 2nd cell. Active gasification, rising sludge, and floating scum/sludge were present in the 1st cell. A scum layer was present in the northeast part of the 1st cell. Discarded veterinarian supplies were present in the 1st cell and along the shoreline. Freeboard was approximately 2.5' in both lagoons. No irrigation to cropland was occurring.

Samples were collected (see E. Ackerman memo dated June 24, 2002).

5. Building Pits: According to Doug Baird, a different building pit is recharged each day in sequence. The recycle pump used to pump wastewater from the second lagoon to recharge the pits was out of service for repair and a PTO pump was in use.

6. Odors: No off-site observations made.


James E. Kammuehler

JEK/lc

Attachment(s): Roster
Lab Sheets
Photographs

cc: J. McBride
Peoria File

The Highlands Meeting June 24, 2002

<u>Name</u>	<u>Affiliation</u>
Greg Paterson	BioSun Systems Corp.
Dan Heacock	Illinois EPA
Doug Baird	The Highlands
Sam Ennis	Murphy Farms
Chuck Gering	McDermott, Will & Emery
Eric Ackerman	Illinois EPA
Doug Lenhart	Murphy Farms
Jim Kammueler	Illinois EPA
Jane McBride	AGO
Todd Huson	Illinois EPA
Tom Andryk	Illinois EPA
Terry Feldmann	Feldmann & Associates
Sara Naylor	GEC Intern
Ryan Miller	GEC Intern
Mike Dobb	GEC Intern

Inspection Report

Subject: KNOX COUNTY (Near Williamsfield) -Murphy Family Farms, Inc./The Highlands, LLC
 Manure Release
 Fish Kill Investigation

To: DWPC/FOS & RU

From: Eric O. Ackerman DWPC-FOS, Peoria Region

Date: June 19, 2002

On the above date, Todd Huson and I responded to a report of a manure release from Murphy Family Farms, Inc./The Highlands, LLC swine facility south of Williamsfield. Mr. Doug Baird was contacted at the facility and accompanied us during the field visit. Wastewater samples were collected with laboratory (analytical) results provided in Table 1. Refer to the attached drawings and photographs for additional details. Weather conditions were hot and humid with a temperature above 70°F. No rain was reported at the facility during the previous 24 hours. A very light misting occurred during the initial portion of this inspection. The following paragraphs report details of the field visit.

Off-Site Odors

Enroute to the site, offensive swine waste odors were noted approximately 1 mile north of the swine facility. The swine waste odors were noted at 11:52 AM on road 1200 N near the Leonard residence. Wind was out of a southerly direction. The odors were emanating from the Murphy Family Farms, Inc. facility.

Wastewater Irrigation

Todd Huson and I examined the irrigation field located immediately west of the swine waste lagoons. The field is located in the NW ¼, Section 10, T10N, R4E (Elba Township) in Knox County. The field is planted in soybeans with a stand less than 6-inches in height. It was apparent that wastewater from the swine waste lagoon system was recently spray irrigated on the southeast portion of this field. Dry field conditions were noted except in the irrigation area where wet/muddy field conditions existed. Aluminum irrigation pipe extended westward and north from the lagoons and into this field. The piping extended to a hose reel and traveling gun (AG-RAIN) irrigation unit located in the field. (See photographs.) Puddles of red colored lagoon wastewater were observed in the field.

Surface runoff from the irrigation (soybean) field flows to the south into a cornfield. An eroded, wet channel existed in the soybean field and extended south into the cornfield where surface runoff recently flowed. The surface of the cornfield was dry except in the eroded channel/waterway area. The channel extended south to the southern edge of the cornfield where Interstate 74 borders the field. At this location the wetted area fanned out and the wastewater entered a buried field tile and flowed under Interstate 74. An outlet was observed on the south side of Interstate 74 at a location south and east of the channel in the cornfield. On the south side of the interstate, dead earthworms were prevalent in the small receiving stream. From this location, direction of flow is south as shown in Figure 2.

JEK
7/19/02

Discussion

Following the above observations we proceeded to the sow farm of Murphy Family Farms, Inc. Doug Baird was contacted at the facility. Mr. Baird offered the following explanation. On the morning of Tuesday, June 18, 2002 (at approximately 8 AM) he started the irrigation unit serving the lagoon system. The traveling gun and hose reel were positioned in the southeast quadrant of the irrigation (soybean) field. Wastewater was pumped from the fourth (final) lagoon cell. A tractor (IH 1566) with PTO driven pump was positioned at the lagoon. The pump (AG-RAIN) is rated at 1200 gpm according to Doug Baird and is equipped with an 8-inch diameter intake and 4-inch diameter outlet. It is plumbed to 6-inch diameter aluminum irrigation pipe to transfer wastewater to the hose reel and gun. Wastewater was pumped continuously until approximately 1 PM on June 18, 2002, when Doug Baird shut off the tractor/pump. He indicated that during the day of operation he noticed that the irrigation gun had not traveled as far as it normally would through the spray field. Doug Baird reported that sometime later he discovered that the lagoon wastewater flowed south, off the surface of the irrigation site and discharged from his property. He attributed the runoff incident to an excess of wastewater applied to wet field conditions. The wet field conditions prevented infiltration of the wastewater.

Stream Observations

Doug Baird, Todd Huson, and I then drove to the receiving stream located south of Interstate 74 and shown as Station C in Figure 3. This small stream passes under a gravel road (1000 N) and is tributary to French Creek. At this location it was discovered that a fish kill occurred in the stream. Approximately 100 dead minnows/small fish were observed. Stream samples were then collected at various locations as shown in Figure 3 and described below. Laboratory results are included in the attached Table 1.

Wastewater Sample Collection

Station A (3:04 PM June 19, 2002):

Station A identifies an upstream sample collected from French Creek. The sample was taken just upstream from the confluence with the unnamed tributary as shown in Figure 3. Flow in French Creek was significantly greater than that in the tributary. French Creek was clear. This station is located in the SW ¼, Section 14, Elba Township in Knox County.

Station B (3:56 PM June 19, 2002):

Station B identifies a sample collected from the spray irrigation field located just west of the swine waste lagoons at Murphy Family Farms, Inc. Lagoon wastewater was puddled in the field. The liquid was red colored, turbid and contained a swine waste odor. This station is located in the NW ¼, Section 10, Elba Township in Knox County.

Station C (1:16 PM June 19, 2002):

Station C is located in the unnamed tributary to French Creek where the small stream passes under gravel road 1000 N. This station is in the NE ¼, Section 15, Elba Township in Knox County. Numerous dead minnows/small fish were observed. The stream was turbid and brownish colored with slight foam in places. Station C is about 1 mile downstream from the irrigation (soybean) field. Sample results are provided in Table 1.

Station C-1 (1:46 PM June 19, 2002):

Station C-1 identifies a sample collected from the unnamed tributary to French Creek. This station is about 3/8 mile downstream from Station C. Numerous dead minnows/small fish were observed at this point. At Station C-1 the stream was turbid with a reddish brown color and foam in places.

Station C-3 (2:42 PM June 19, 2002):

Station C-3 identifies a wastewater sample collected from the unnamed tributary to French Creek at a distance about 1/4 mile downstream from Station C-1. Numerous dead minnows/small fish were observed in the stream. The stream was turbid and red colored with a swine waste odor and foam in places. This station is located in the SE 1/4, Section 15, Elba Township in Knox County.

Station C-4 (3:05 PM June 19, 2002):

Station C-4 is located approximately 1/4 mile downstream from Station C-3 in the unnamed tributary to French Creek. The sample was taken just prior to the confluence with French Creek. The small stream was red colored and contained a swine waste odor. Dead minnows were observed. Red colored wastewater was observed discharging into French Creek. The station is in the SW 1/4, Section 14, Elba Township in Knox County.

Station C-5 (2:16 PM June 19, 2002):

This station identifies a sample collected downstream in French Creek. The station is located in the NE 1/4, Section 22, Elba Township in Knox County. A north/south gravel road meets the stream at this point. A swift, clear flow was noted in French Creek. The stream contained a gravel base and was approximately 25 feet wide x 18 inches deep with velocity of about 3 fps.

Downstream Livestock Producers

During the fieldwork attempts were made to contact 2 separate livestock producers with livestock watering from the affected stream. An individual was contacted at the property near Station C, whose livestock are in the SW 1/4, SE 1/4, Section 10, Elba Township in Knox County. This individual reported that they were aware of the polluted stream condition having noticed it on the afternoon of the previous day, Tuesday, June 18, 2002. They contacted Doug Baird and advised him of the polluted stream conditions.

This report is submitted for your information.



Eric O. Ackerman

Att: -Figure 1
-Figure 2
-Figure 3
-Laboratory Sheets
-Photographs
-Table 1

cc: -Tom Andryk, DLC
-Jane McBride, IAGO
-Peoria Files

ELBA

T.10 N.-R.4 E.

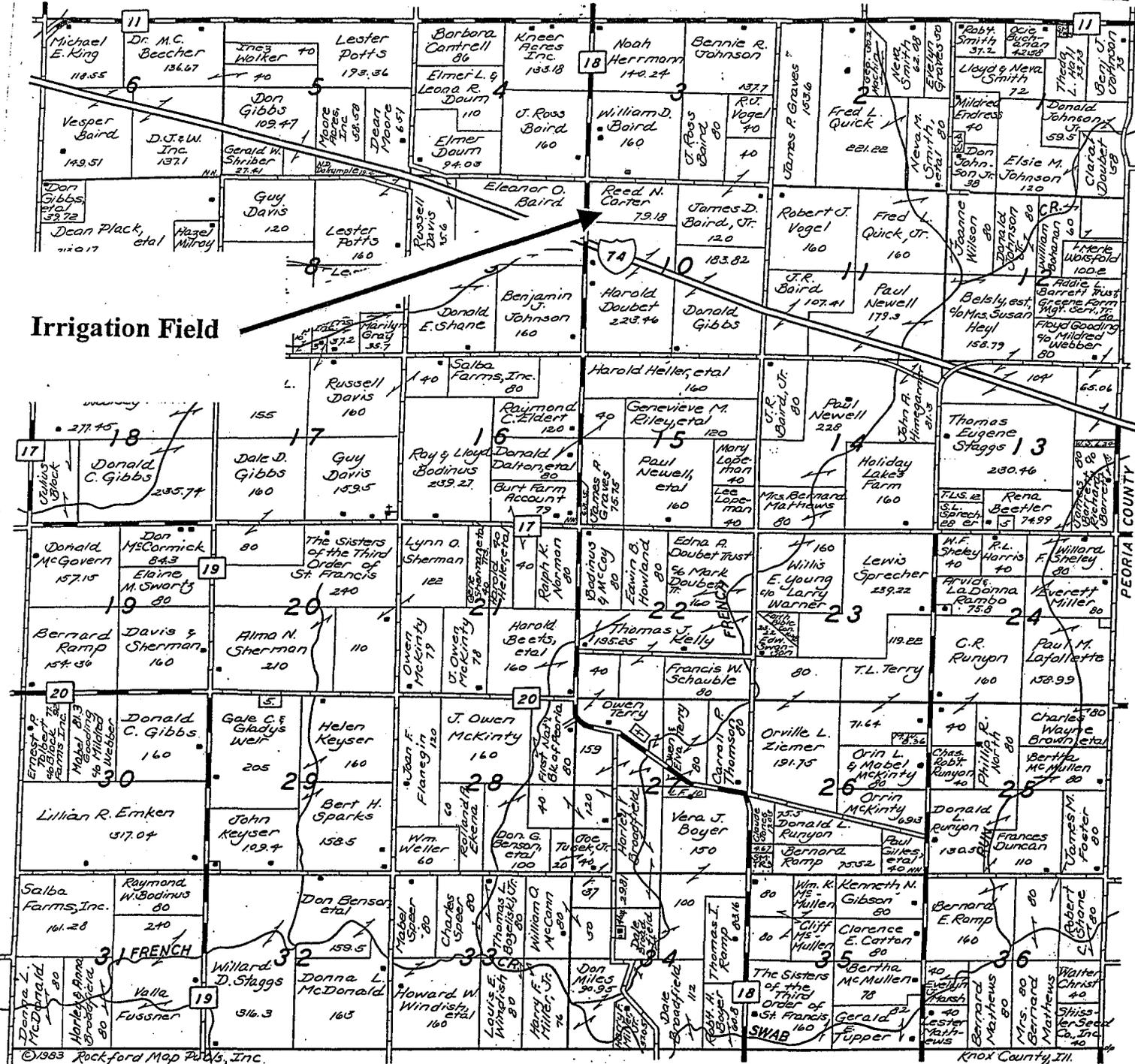


Figure 1. Plat Map (Location) of Land Application/Irrigation Site Near Murphy Family Farms, Inc./Highlands, LLC in Knox County on June 19, 2002.

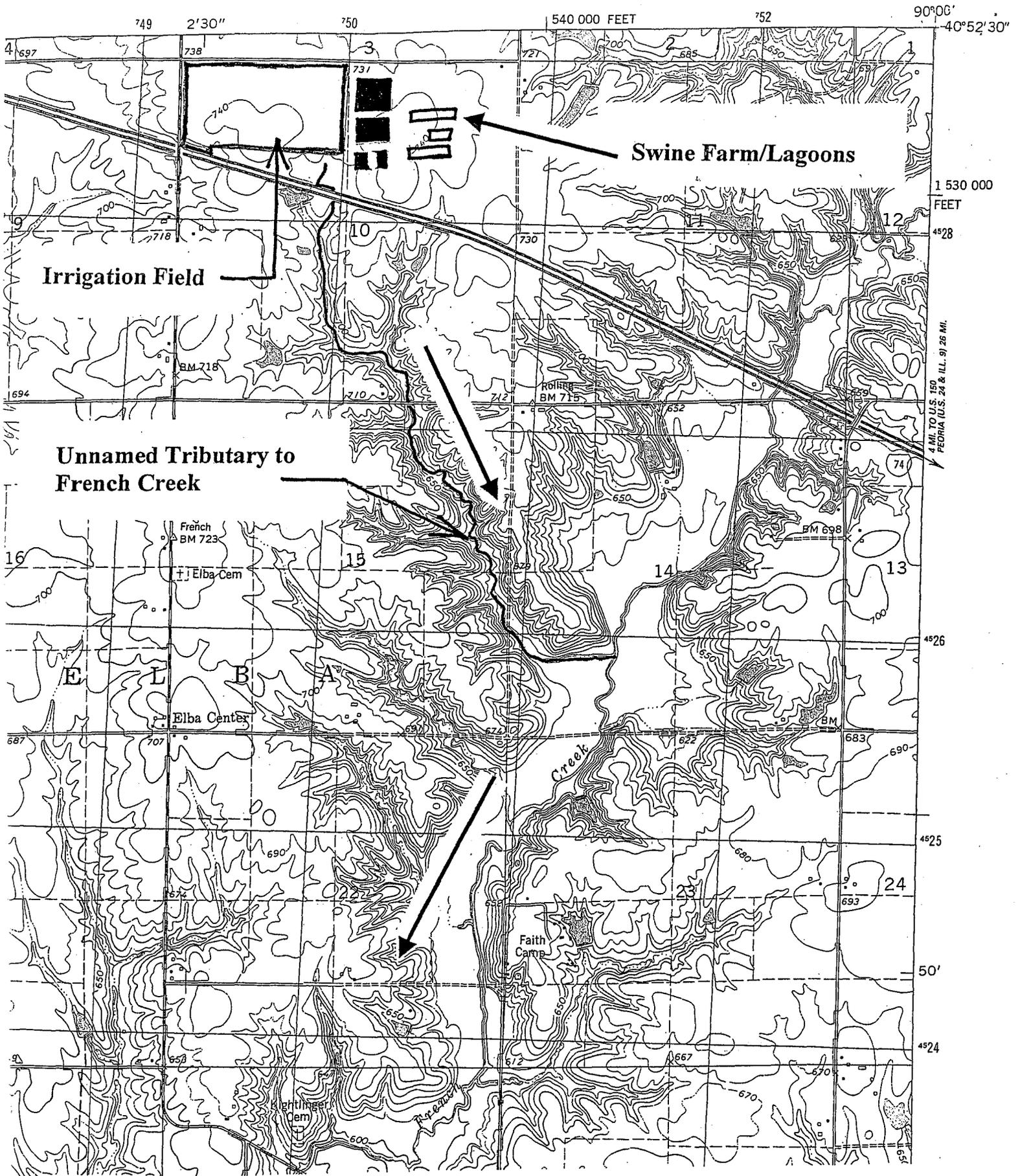


Figure 2. Topographical Map of Land Application/Irrigation Site and Unnamed Tributary to French Creek near Murphy Family Farms, Inc./Highlands, LLC in Knox County on June 19, 2002.

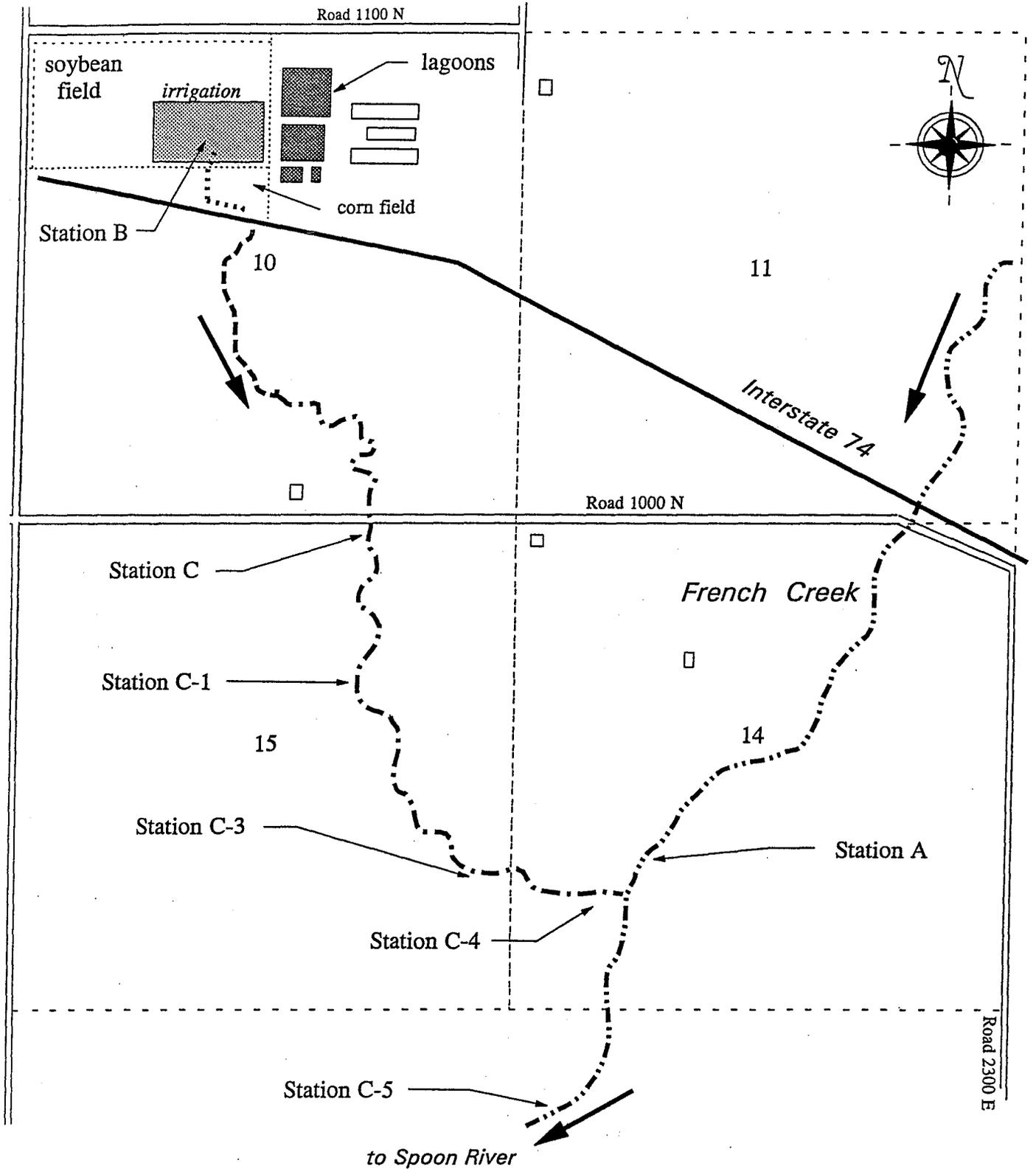
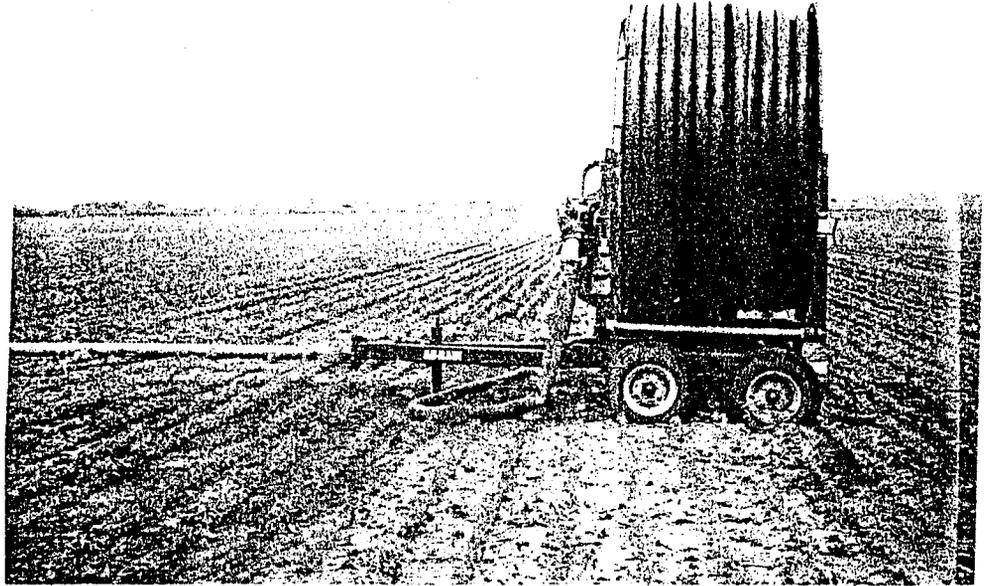


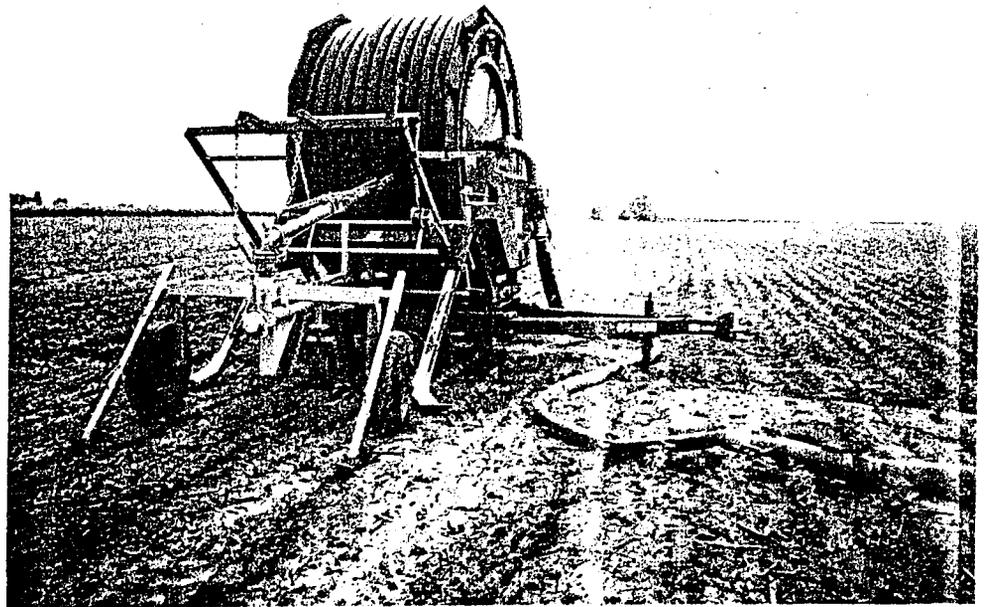
Figure 3. Sample Locations at Murphy Family Farms, Inc./Highlands, LLC in Knox County on June 19, 2002.

Murphy Family Farms, Inc. /The Highlands, LLC
Knox County
June 19, 2002
(IEPA-FOS-Peoria)

Photograph #1.
The irrigation hose reel and soybean field are shown.
View is east.
Swine confinement buildings are in the background.



Photograph #2.
The traveling irrigation gun and hose reel are shown. View is west.



JEC
7/3/02

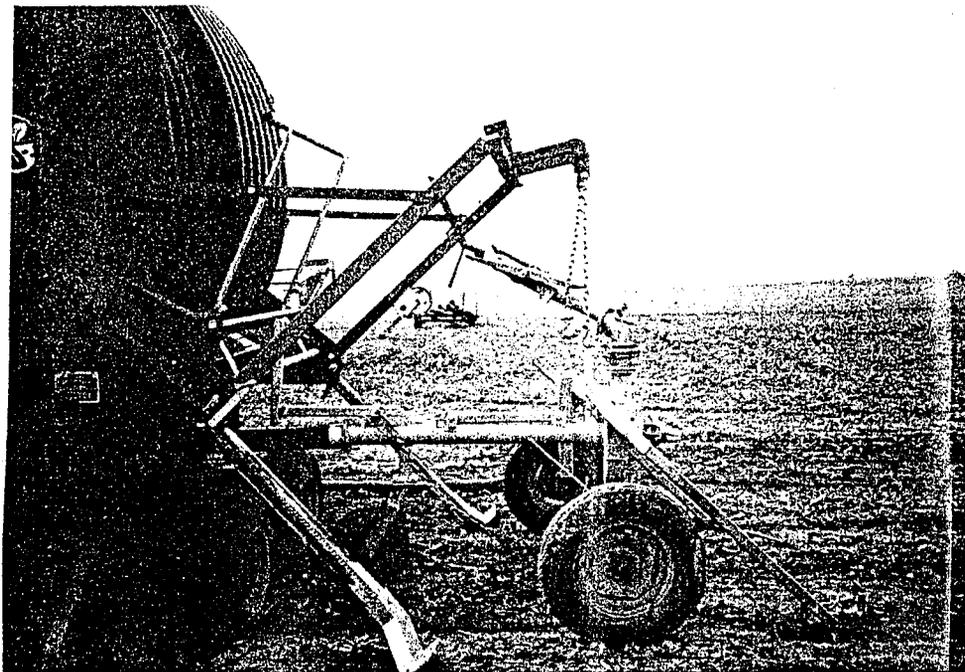
Murphy Family Farms, Inc./The Highlands, LLC

Knox County

June 19, 2002

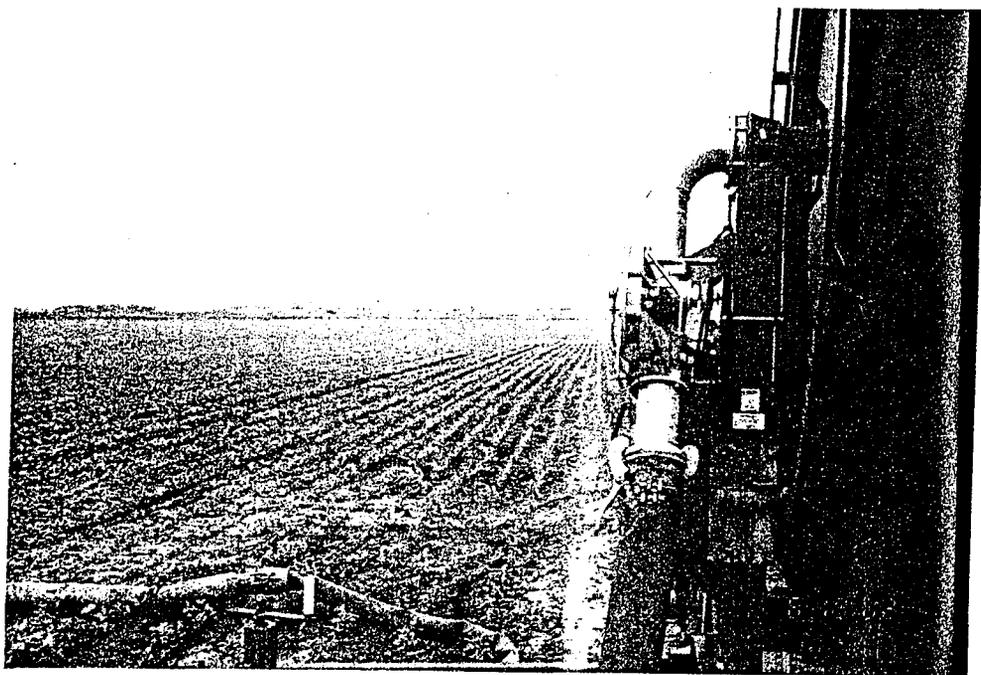
Photograph #3.

The traveling irrigation gun and hose reel are shown in the soybean field. View is north.



Photograph #4.

A portion of the hose reel and soybean field are shown. The swine confinement buildings are seen in the background. View is east.



Murphy Family Farms, Inc./The Highlands, LLC
Knox County
June 19, 2002

Photograph #5.
Red colored
wastewater is
shown in the
irrigation field.

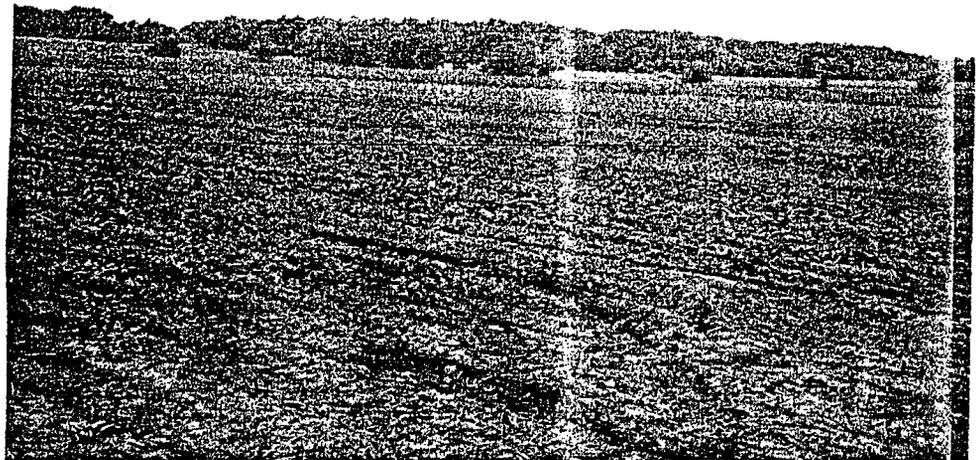


Photograph #6.
The soybean (irrigation)
field is shown with
swine confinement
buildings in the
background.
View is east.

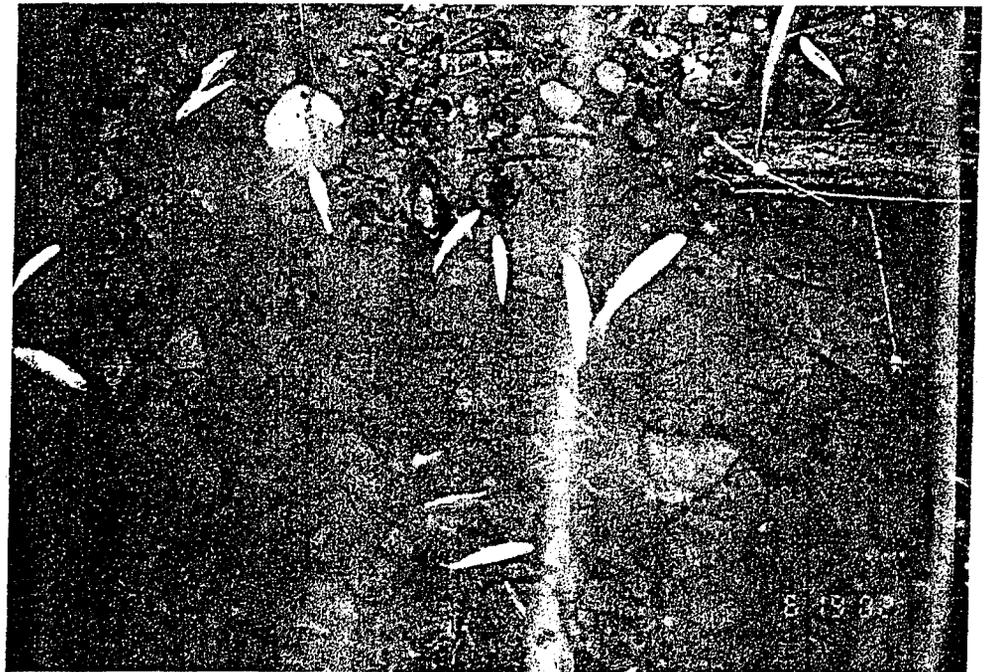


Murphy Family Farms, Inc./The Highlands, LLC
Knox County
June 19, 2002

Photograph #7.
The soybean
(irrigation) field
and cornfield are
shown. Interstate 74
is seen in the
background. View
is southeast.



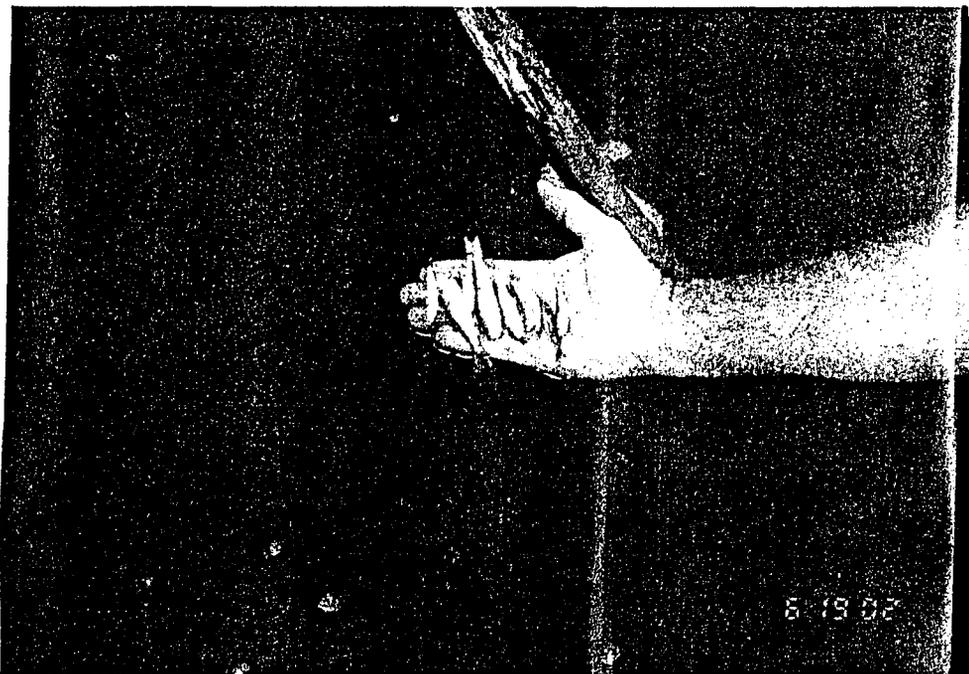
Photograph #8.
Dead minnows/fish
are seen in the
receiving stream
downstream from
the irrigation field.
This stream is an
unnamed tributary
to French Creek.



Murphy Family Farms, Inc./The Highlands, LLC
Knox County
June 19, 2002

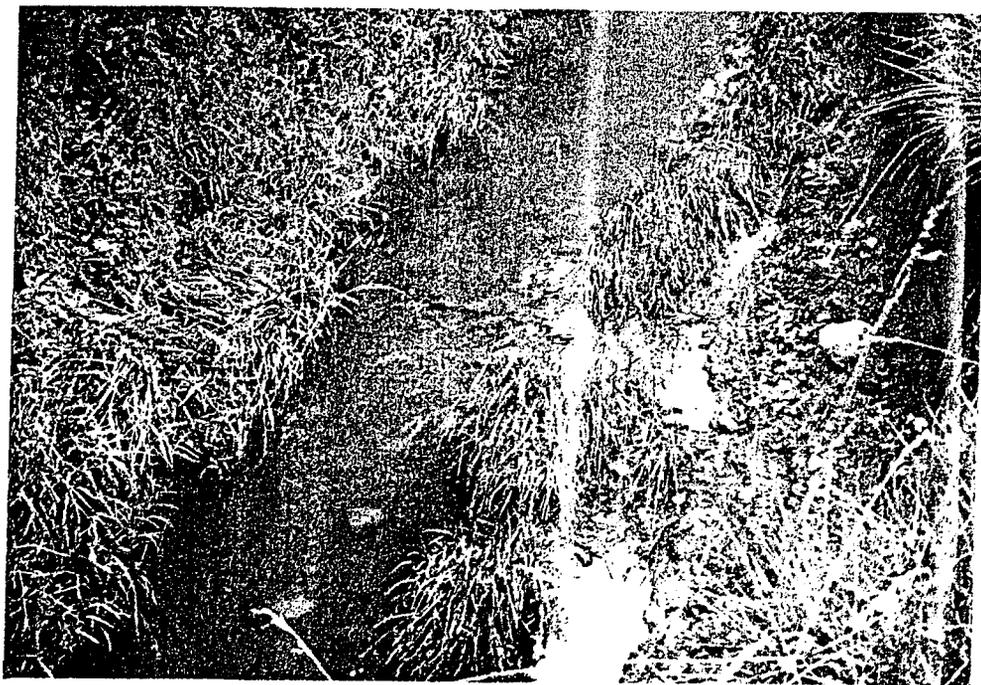
Photograph #9.

A collection of dead minnows/
fish are shown
at the unnamed
tributary to
French Creek.



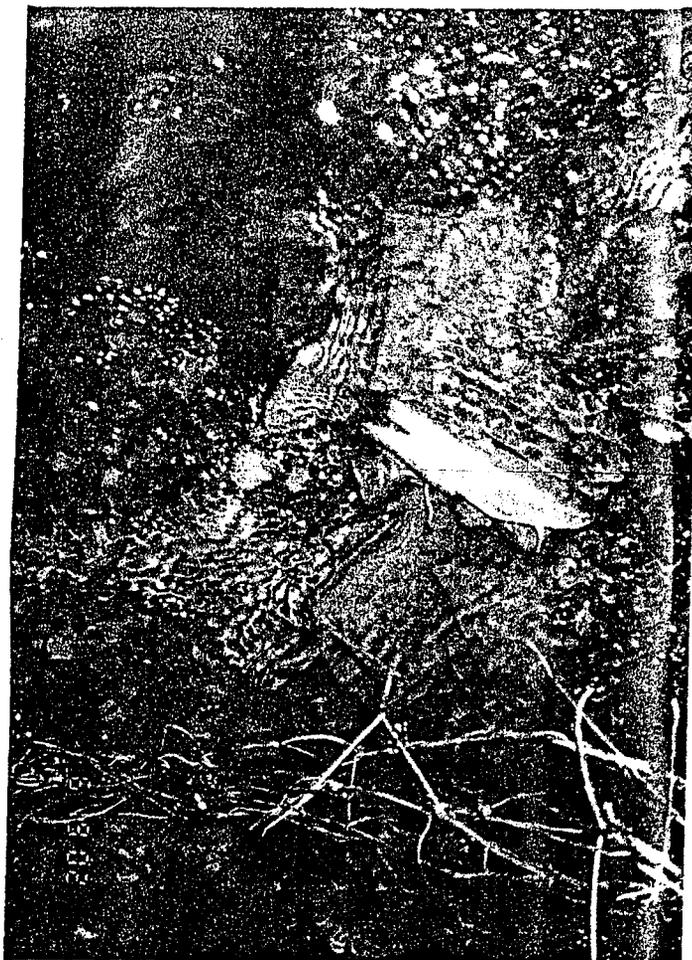
Photograph #10.

The receiving stream
is shown at a location
downstream from the
irrigation field. This
is an unnamed tributary
to French Creek.



Murphy Family Farms, Inc./The Highlands, LLC
Knox County
June 19, 2002

Photograph #11.
Dead fish/minnow
shown in unnamed
tributary to French
Creek.

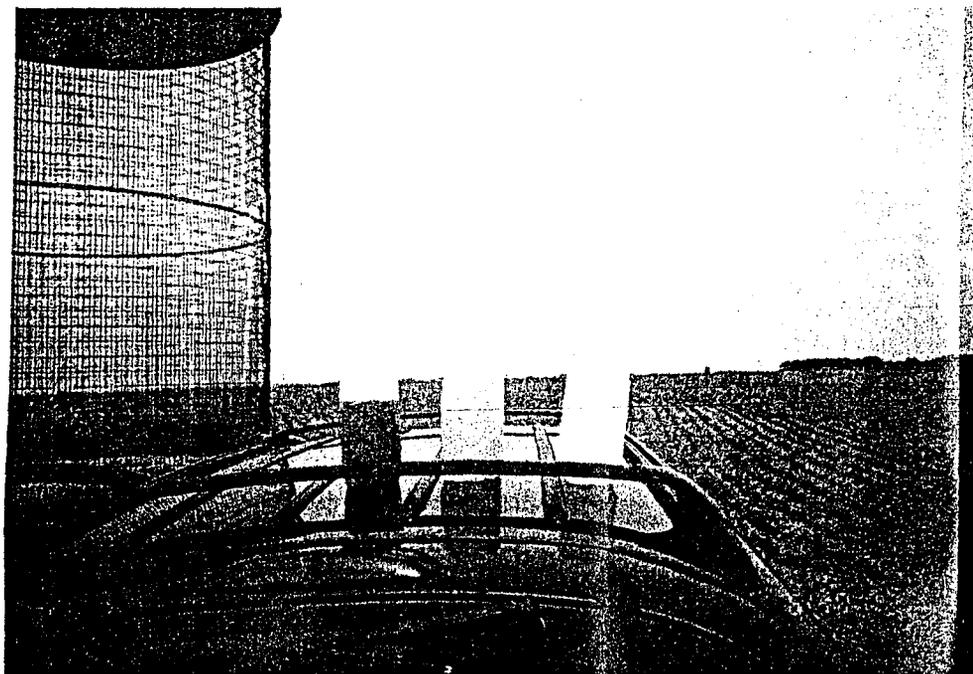


Photograph #12.
The receiving stream
is shown.

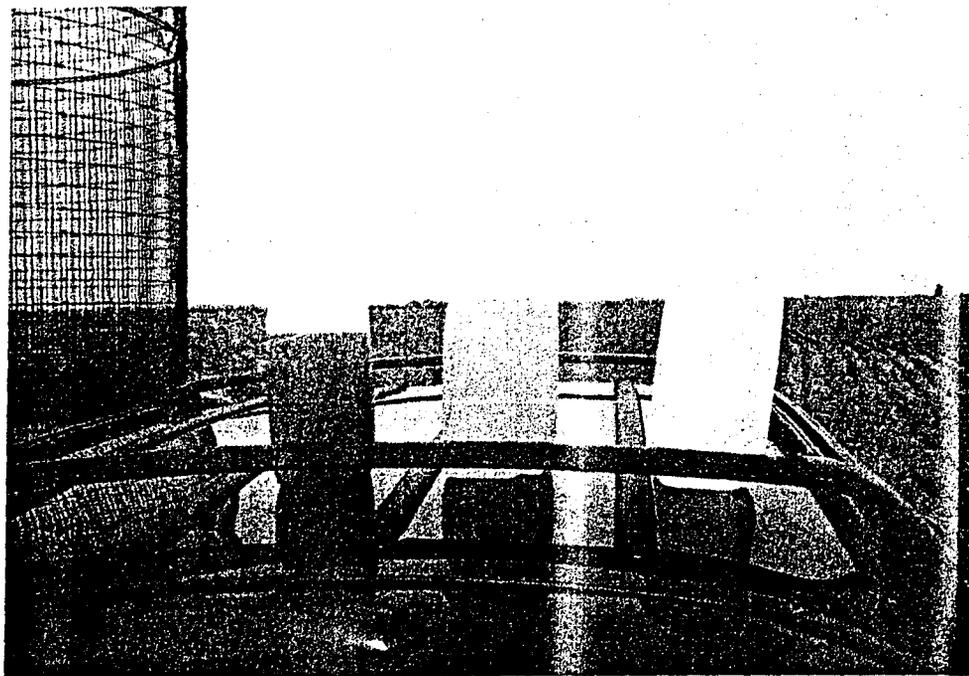


Murphy Family Farms, Inc./The Highlands, LLC
Knox County
June 19, 2002

Photograph #13.
Samples are shown
with soybean field
in background.



Photograph #14.
Samples are shown
with soybean field
in background.



RECEIVED
ATTORNEY GENERAL

JUL 11 2002

ENVIRONMENTAL

Memorandum

Subject: Knox County
(near Williamsfield)

**The Highlands Sow Farm
Facility/Odor Inspection**

To: DWPC/FOS & RU
From: Todd R Huson, DWPC-FOS, Peoria Region
Date: February 7, 2002

Accompanied: Eric Ackerman, DWPC-FOS, Peoria Region
Interviewed: Doug Baird, Owner/Manager

RECEIVED
ATTORNEY GENERAL
FEB 21 2002
SPRINGFIELD
ASSIGNED TO

On February 7, 2001, an inspection was performed at the Highlands Sow Farm located south of Williamsfield in Knox County. This 3600 sow, farrow to wean, swine facility is owned by Jim and Doug Baird, and swine are owned by Murphy Family Farms. This farm consists of a gestation unit, farrowing unit, breeding unit, finishing unit, nursery, office, and wastewater handling facilities. The waste management system consists of 16" pull-plug pits in each confinement unit and a two-cell wastewater system. Doug Baird was contacted at the Baird Seed Co.'s office, and did not accompany us during the inspection. The weather was clear and cool (40-45° F) with winds gusting from the west by southwest.

Livestock wastewater is diverted from the buildings to the two-cell anaerobic lagoon system through three inlet lines. The contents of the primary and secondary lagoons were pink to red in color and cloudy. Small gas bubbles, rising sludge, and surface scum were noted in the primary cell. The majority of the surface of the secondary lagoon was covered by a thin sheet of ice. A strong septic odor was noted along the east side (downwind) of both lagoons (due to anaerobic activity). Bacteria additives supplied by Bio Sun Technologies are still reportedly being added to this two-cell anaerobic lagoon system. A grab sample was obtained from in each lagoon for analysis (primary cell @ ~1:45 PM and secondary cell @ ~1:55 PM). The secondary lagoon provides pit recharge (flush) water. A baffle was installed across the SE corner of this cell to isolate the submersible recharge pump. This wastewater is pumped continuously into the building pits. The two small cells located just south of the primary cell still contain wastewater, however, the water level is lower than the primary and secondary cells.

The following off-site odor observations were made during this inspection. A strong swine and swine waste odors were noted downwind (east) of the facility along County Road 2200E (at the Roy and Diane Kell Residence). These odors appeared to be a combination of swine waste odors from the anaerobic lagoons and livestock/pit odors from the confinement buildings.

trh/

Att: Site Map
Photographs
Lab Sheets (to be forwarded)
cc: Peoria
Jane McBride, IAGO
DLC


Todd R Huson

JFK
2-20-02

Date: February 7, 2002

CROPLAND

1100 N

2210 E (COUNTY HWY 18)

THE HIGHLANDS LLC
3600 SOW FARM
NEAR WILLIAMSFIELD IN KNOX COUNTY

2220 E

KELL RESIDENCE

IRRIGATION FIELDS

SECONDARY CELL

PRIMARY CELL

SWINE CONFINEMENT UNITS

GESTATION BUILDING

OFFICE/GARAGE

BREEDING BUILDING

FARROWING BUILDING

NURSERY BUILDING

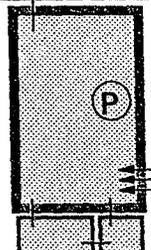
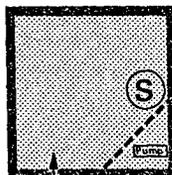
FINISHING BUILDING

WIND DIRECTION

Swine and Swine Waste
Odors Noted

HOME

BARN



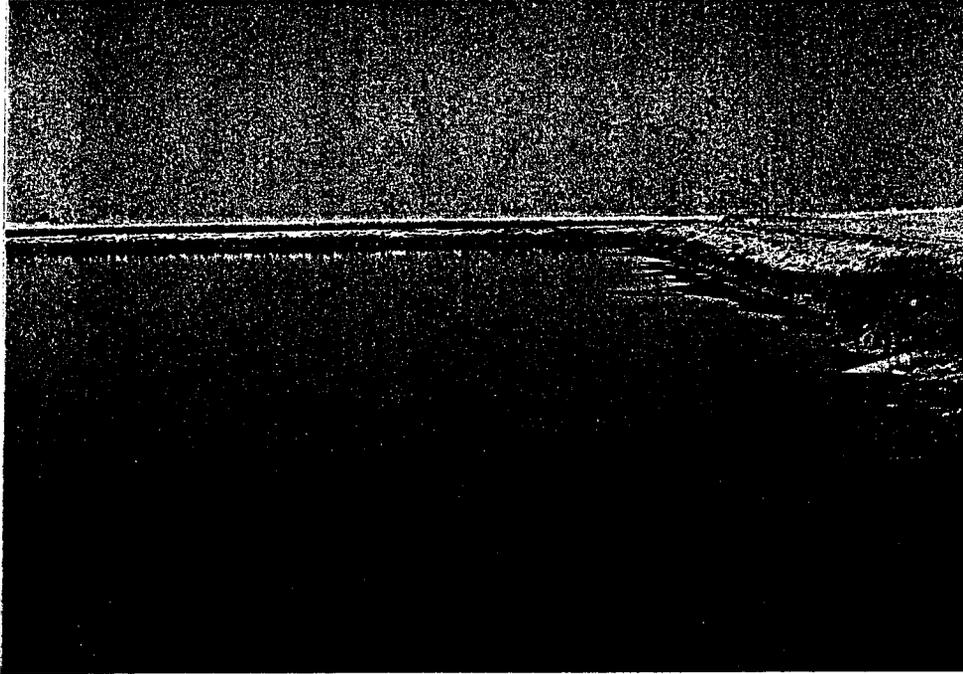
ADDITIONAL CELLS (REFILLED)

Sample Location

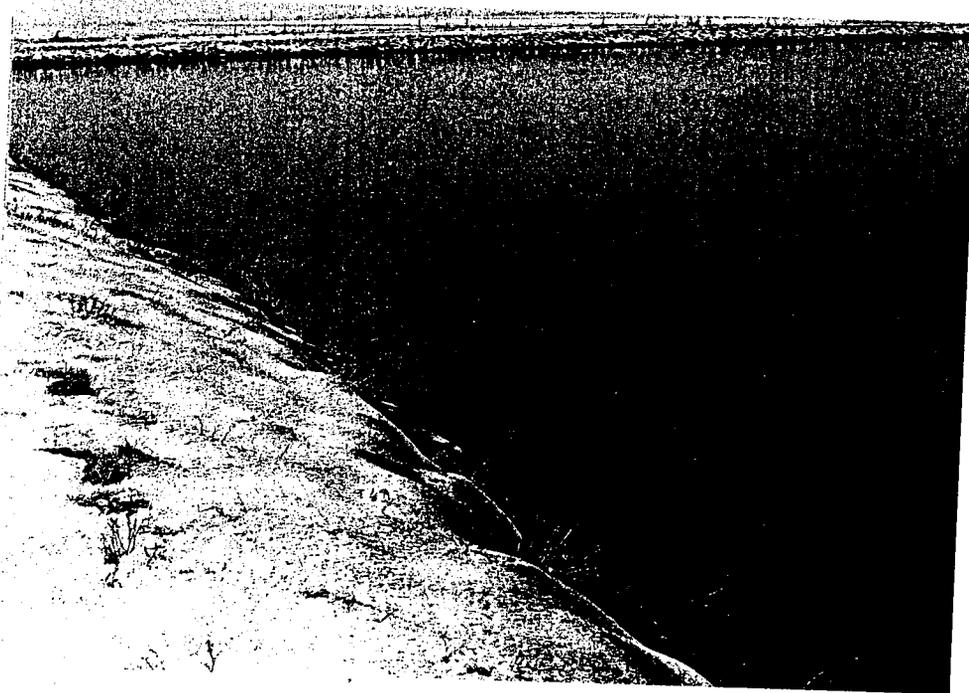
(P) Primary Cell

(S) Secondary Cell

The Highlands Swine Farm (Knox County)
Primary Anaerobic Lagoon Cell
Photographed By: Eric Ackerman, DWPC/FOS on February 7, 2002



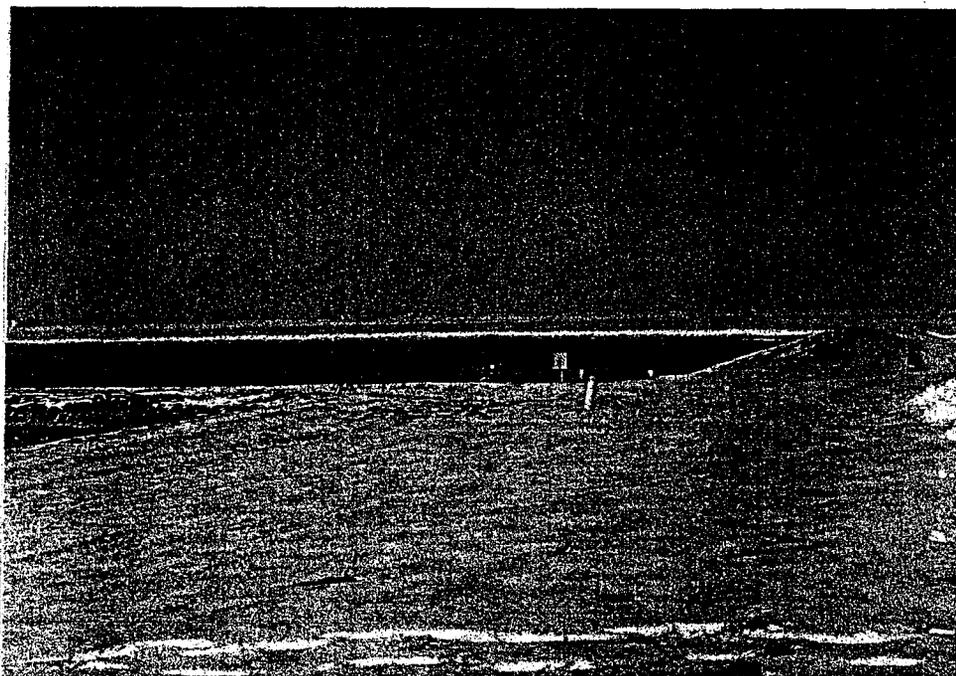
The Highlands Swine Farm (Knox County)
Primary Anaerobic Lagoon Cell
Photographed By: Eric Ackerman, DWPC/FOS on February 7, 2002



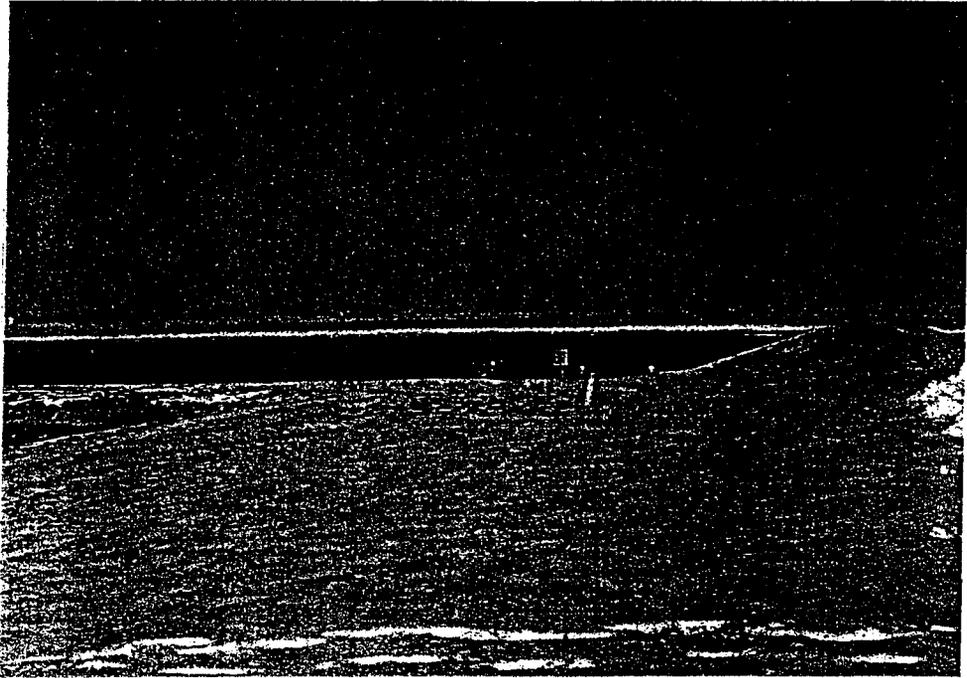
The Highlands Swine Farm (Knox County)

Secondary Anaerobic Lagoons Cell

Photographed By: Eric Ackerman, DWPC/FOS on February 7, 2002



The Highlands Swine Farm (Knox County)
Secondary Anaerobic Lagoons Cell
Photographed By: Eric Ackerman, DWPC/FOS on February 7, 2002



Memorandum

**Subject: Knox County
(near Williamsfield)**

**The Highlands Sow Farm
Odor Inspection**

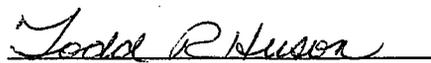
**To: DWPC/FOS & RU
From: Todd R Huson, DWPC-FOS, Peoria Region
Date: January 18, 2002**

On January 18, 2002, I was conducting field work in Knox County and drove by the Highlands Sow Farm. This 3600 sow, farrow to wean, swine facility is located south of Williamsfield in Knox County. I did not enter the facility or contact anyone at the farm.

The following odor observations were made as I drove in the vicinity of the subject facility. I noted swine and swine waste odors downwind (east) of the facility along County Road 2200E (south of the Roy and Diane Kell Residence). These odors appeared to be a combination of swine waste odors from the anaerobic lagoons and livestock/pit odors from the confinement buildings. During this inspection (~2:30 PM), the weather was cold and clear, with winds gusting from the west.

trh/

Att: Site Map


Todd R Huson

cc: Peoria
Jane McBride, IAGO
DLC
TRH

JSK
1-29-02

Date: January 18, 2002

CROPLAND

1100 N

2210 E (COUNTY HWY 18)

THE HIGHLANDS LLC 3600 SOW FARM

NEAR WILLIAMSFIELD IN KNOX COUNTY

2220 E

KELL RESIDENCE

HOME

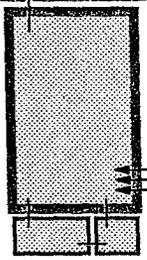
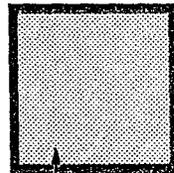
BARN

IRRIGATION FIELDS



SECONDARY CELL

PRIMARY CELL



ADDITIONAL CELLS (REFILLED)

SWINE CONFINEMENT UNITS

GESTATION BUILDING

OFFICE/GARAGE

BREEDING BUILDING

AIR DAM

FARROWING BUILDING

AIR DAM

NURSERY BUILDING

FINISHING BUILDING



Swine and Swine Waste
Odors Noted

Memorandum

Subject: Knox County
(near Williamsfield)

**The Highlands Sow Farm
Odor Inspection**

To: DWPC/FOS & RU
From: Todd R Huson, DWPC-FOS, Peoria Region
Date: December 13, 2001

On December 13, 2001, I was conducting fieldwork in Knox County and drove by the Highlands Sow Farm. This 3600 sow, farrow to wean, swine facility is located south of Williamsfield in Knox County. DWPC-FOS, Peoria Regional Office, received an odor complaint concerning this livestock operation earlier this date from Roy Kell. Roy and Diane Kell live ~1/4 mile northeast of the facility. I did not enter the facility or contact anyone at the farm, but I did interview Roy and Diane Kell. During this inspection, the weather was cool and cloudy with mild winds gusting from the west by southwest.

The following odor observations were made in the vicinity of the subject facility. I noted strong swine and swine waste odors downwind (east by northeast) of the facility along County Road 2200E and at the Roy and Diane Kell Residence. These odors appeared to be a combination of swine waste odors from the anaerobic lagoons and livestock/pit odors from the confinement buildings. The odors from the swine farm appeared to be particularly strong at the Kell residence. Roy indicated that off-site odors from this facility penetrate sealed windows and doors, and often awaken Roy and Diane during the night. The odor control measures implemented at this livestock facility do not appear to be adequate.

trh/

Att: Site Map


Todd R Huson

cc: Peoria
Jane McBride, IAGO
DLC
TRH

RECEIVED
ATTORNEY GENERAL
DEC 19 2001
SPRINGFIELD
ASSIGNED TO _____

JKK
12-14-01

Date: December 13, 2001

CROPLAND

1100 N

2210 E (COUNTY HWY 18)

THE HIGHLANDS LLC 3600 SOW FARM

NEAR WILLIAMSFIELD IN KNOX COUNTY

2220 E

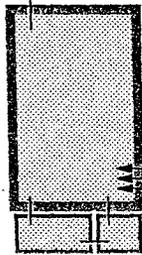
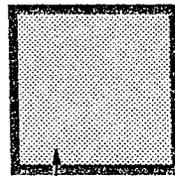
KELL RESIDENCE

IRRIGATION FIELDS



SECONDARY CELL

PRIMARY CELL



ADDITIONAL CELLS (REFILLED)

SWINE CONFINEMENT UNITS

GESTATION BUILDING

OFFICE/GARAGE

BREEDING BUILDING

AIR DAM

FARROWING BUILDING

AIR DAM

NURSERY BUILDING

FINISHING BUILDING

WIND DIRECTION

Swine and Swine Waste
Odors Noted

HOME

BARN

Memorandum

**Subject: Knox County
(near Williamsfield)**

**The Highlands Sow Farm
Odor Inspection**

**To: DWPC/FOS & RU
From: Todd R Huson, DWPC-FOS, Peoria Region
Date: December 4, 2001**

On December 4, 2001, I was conducting field work in Knox County and drove by the Highlands Sow Farm. This 3600 sow, farrow to wean, swine facility is located south of Williamsfield in Knox County. I did not enter the facility, but I did contact Doug Baird. During this inspection, the weather was seasonally warm (~67 degrees) and cloudy with strong winds gusting from the south by southwest.

The following odor observations were made as I drove in the vicinity of the subject facility. I noted relatively strong swine waste odors downwind of the anaerobic lagoons along County Road 1100N. I also noted a combination of livestock (swine) and waste (pit) odors downwind of the confinement buildings along County Road 1100N. The odors from this swine production facility appeared to be particularly strong along this road and the odor sources were easily identified. In addition, I noted a detectable swine/swine waste odors downwind of the facility along County Road 1200N (near the Leonard residence). The odor control measures implemented at this livestock facility do not appear to be adequate.

trh/

Att: Site Map


Todd R Huson

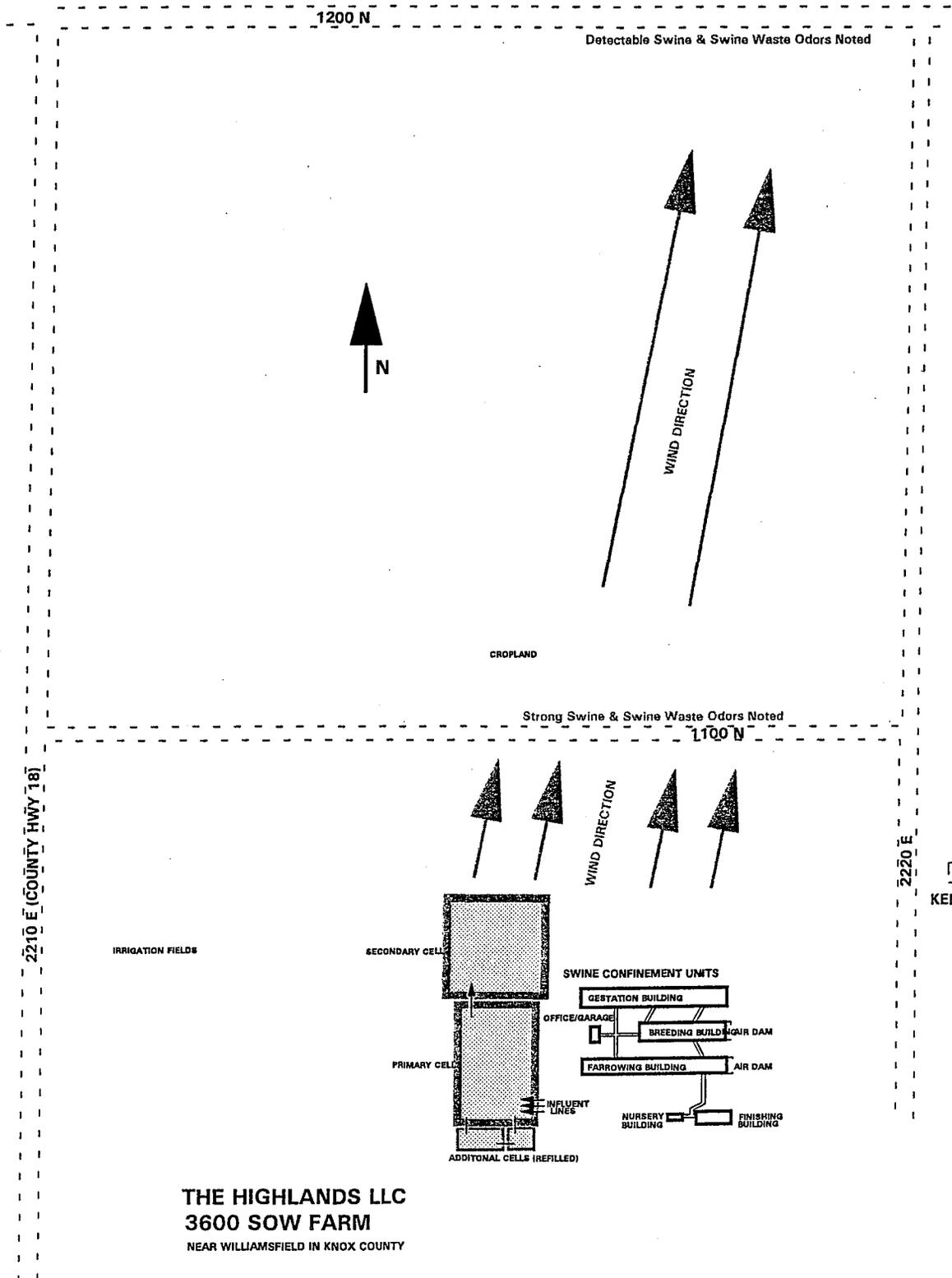
cc: Peoria
Jane McBride, IAGO
DLC
TRH

TRH
12-12-01

TRH
12-12-01

Date: December 4, 2001

LEONARD RESIDENCE HOME



THE HIGHLANDS LLC
3600 SOW FARM
NEAR WILLIAMSFIELD IN KNOX COUNTY

Memorandum

**Subject: Knox County
(near Williamsfield)**

**The Highlands Sow Farm
Odor Inspection**

**To: DWPC/FOS & RU
From: Todd R Huson, DWPC-FOS, Peoria Region
Date: November 27, 2001**

On November 27, 2001, I was conducting field work in Knox County and drove by the Highlands Sow Farm. This 3600 sow, farrow to wean, swine facility is located south of Williamsfield in Knox County. I did not enter the facility, but I did contact Doug Baird at the Baird Seed Company Office. I also interviewed Roy and Diane Kell. During this inspection, the weather was cool and cloudy with strong winds gusting from the west by southwest.

The following odor observations were made as I drove in the vicinity of the subject facility. I noted strong swine and swine waste odors downwind (east by northeast) of the facility along County Road 2200E and at the Roy and Diane Kell Residence. These odors appeared to be a combination of swine waste odors from the anaerobic lagoons and livestock/pit odors from the confinement buildings. DWPC-FOS, Peoria Regional Office, received an odor complaint concerning this livestock operation earlier this date from Roy Kell. Roy and Diane Kell live ~1/4 mile northeast of the facility. The odors from the swine farm appeared to be particularly strong at the Kell residence. Roy stated that off-site odors from this swine facility have been stronger during recent weeks. These odors penetrate sealed windows and doors, and often awaken Roy and Diane during the night. The odor control measures implemented at this livestock facility do not appear to be adequate.

Doug Baird indicated that additional odor control measures are being considered, specifically an aerobic digester. However, Doug expressed concern that an aerobic digester may be too expensive to install and too difficult to operate and maintain.

trh/

Att: Site Map



Todd R Huson

cc: Peoria
Jane McBride, IAGO
DLC
TRH

TRH 12-4-01

Date: November 27, 2001

CROPLAND

1100 N

2210 E (COUNTY HWY 18)

THE HIGHLANDS LLC
3600 SOW FARM
NEAR WILLIAMSFIELD IN KNOX COUNTY

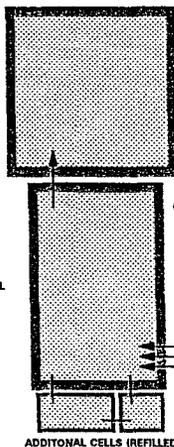
2220 E
Strong Swine/Swine Waste Odors Noted

IRRIGATION FIELDS

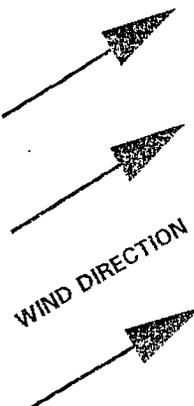
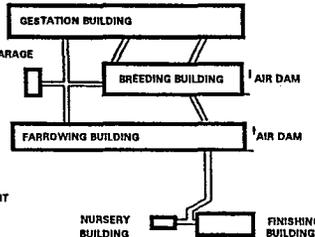


SECONDARY CELL

PRIMARY CELL



SWINE CONFINEMENT UNITS



Memorandum

**Subject: Knox County
(near Williamsfield)**

**The Highlands Sow Farm
Odor Inspection**

**To: DWPC/FOS & RU
From: Todd R Huson, DWPC-FOS, Peoria Region
Date: September 20, 2001**

On September 20, 2001, I was conducting field work in Knox County and drove by the Highlands Sow Farm. This 3600 sow, farrow to wean, swine facility is located south of Williamsfield in Knox County. I did not enter the facility or contact anyone at the farm.

The following odor observations were made as I drove in the vicinity of the subject facility. I noted detectable swine and swine waste odors downwind (northeast) of the facility along County Road 2200E and at the Roy and Diane Kell Residence. These odors appeared to be a combination of swine waste odors from the anaerobic lagoons and livestock/pit odors from the confinement buildings. During this inspection (~3:00 PM), the weather was warm and partly cloudy with light winds gusting from the southwest.

DWPC-FOS, Peoria Regional Office, received an odor complaint concerning this livestock operation earlier this date from Roy Kell. Roy and Diane Kell live northeast of the facility. During this inspection, I interviewed Roy. Roy stated that off-site odors from this swine facility were particularly strong at night and in the early morning hours. He stated that Diane and he were often awakened at night by these odors. The odors penetrate sealed windows and doors. The odor control measures implemented at this livestock facility do not appear to be adequate.

trh/

Att: Site Map

cc: Peoria
Jane McBride, IAGO
DLC
TRH


Todd R Huson

JED
9-25-01

Date: September 20, 2001

CROPLAND

1100 N

2210 E (COUNTY HWY 18)

THE HIGHLANDS LLC 3600 SOW FARM

NEAR WILLIAMSFIELD IN KNOX COUNTY

2220 E

IRRIGATION FIELDS

SECONDARY CELL

PRIMARY CELL

ADDITIONAL CELLS (REFILLED)

SWINE CONFINEMENT UNITS

GESTATION BUILDING

OFFICE/GARAGE

BREEDING BUILDING

AIR DAM

FARROWING BUILDING

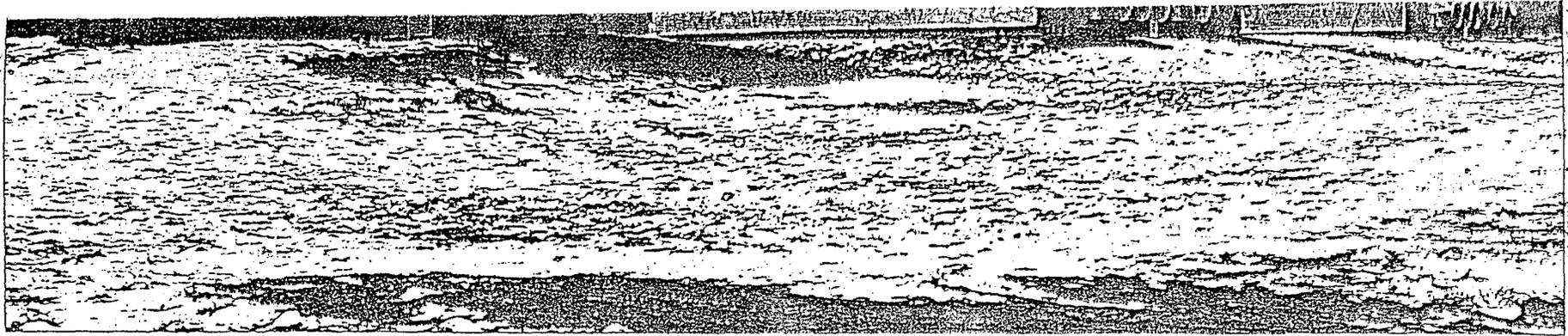
AIR DAM

NURSERY BUILDING

FINISHING BUILDING

INFLUENT LINES





STEVE NAGY/News-Democrat

The operation includes these buildings where hogs are raised. Only a few humans are allowed inside to ensure diseases aren't introduced to the animals.

The family farm — 2003 style

Belleville 3/3
Sophistication marks
pork production

BY GEORGE PAWLACZYK
Belleville News-Democrat

CARLYLE — More than 30,000 animals are kept at the Maschhoffs' pork farm just off Illinois 127, but go there and you won't see pigs, hear pigs or, during the winter, even smell pigs.

Instead, certified public accountants are in plain view, as is a chief financial officer, a veterinarian and an office staff that bustles amid telephones that seem to ring endlessly.

Welcome to The Maschhoffs LLC, a huge operation that opponents call a "factory farm," but what the descendants of granddaddy and founder Ben Maschhoff say is a modern, high-tech version of the family farm.

Ken Maschhoff, a lean, tanned 43-year-old, stepped on-



STEVE NAGY/News-Democrat

The Maschhoffs' home near Carlyle is on the farm grounds.

to the porch of his bungalow-style farm office adjacent to a parking lot. Nearby were a row of new pickup trucks with such license plates as PIGS-R-ME and HOG-BOSS. A hundred yards away was a \$220,000 brick colonial home beside a private lake.

Fronted by white, wooden columns, the spacious home

not far from the pig buildings is where Maschhoff lives with his wife and business partner, Julie Maschhoff, a 1984 National Pork Queen who also works as a representative for Morgan Stanley in Fairview Heights.

"It's not for your protection, but the animals,'" he politely

Please see HOGS, 5B

Research farm tests to cut hog odors

BY GEORGE PAWLACZYK
gpawlaczyk@bnd.com

Every few weeks, transplanted British citizen Mike Ellis watches a panel of women as they each take a long sniff from a plastic bag containing concentrated pig manure odor.

The periodic smell test is part of a five-year effort at the University of Illinois' Animal Services Laboratory to find ways to reduce the smell of hog manure, and thereby lower public resistance to large-scale pork farms.

Ellis said the main method of reducing the odor is by cutting the percentage of nitrogen-rich soybeans in the feed and replacing the beans with amino acids that have less nitrogen.

"We have reduced the odor probably 50 to 60 percent,"

said Ellis, 53, who raised pigs and sheep in his native Newcastle, England.

Ellis and his staff have their own 750-hog farm near the university's Champaign campus, which they operate as a modern "confined" facility, meaning the animals are sealed in a temperature- and germ-controlled environment.

But the farm's main function is to find ways to reduce the smell of hogs, said Ellis, a professor at the university.

The women, who are paid for their sniffing, are staffers at the laboratory. The testing method involves pumping pure air into the bags until the smell of the manure can no longer be detected.

"Yes, we pay for this work," Ellis said. "This isn't the kind of thing we could get volunteers for."

Continued from Page 1B

told a visitor about why people cannot simply stroll into one of the sprawling, low buildings where the pigs are kept.

On this and most other farms today, pigs are sealed off from the outside during the six months it takes them to eat their way to market size, or "hog," status, about 250 pounds.

"It's biosecure," Maschhoff said, "to prevent disease to the animals, not to protect you. This is a highly technical operation. I employ two CPAs and a chief financial officer. This is a highly competitive business."

During their confinement, pigs come into contact only with their caretakers, who during their free time religiously avoid close contact with dogs and cats, which are species that can spread harmful diseases to pigs.

In the climate-controlled buildings, grain and growth hormones are doled out through a computer-regulated feeding schedule. Picky eaters are quickly removed.

At the spot cash price for Saturday, a 250-pound, or "finished" hog, would be worth \$85, considerably below the break-even point of about \$95 to \$100, said Tom Maiers, spokesman for the Illinois Pork Producers Association.

However, like 80 percent of the American pork farms, the Maschhoffs' operation — the largest in the United States — sells through a higher contract price to giant consumers, such as national restaurant chains and supermarkets.

But it's the waste produced by massive and confined herds that causes concern, even in rural Clinton County. In a single building, 30,000 pigs can produce enough manure and urine to fill 100 average-sized swimming pools, or about 90,000 gallons. It would take a city-sized sewer system to handle this output.

Expansion

Animal waste is one of the reasons the Clinton County Board voted 11-1 in October to send a letter to the Illinois Department of Agriculture opposing the Maschhoffs' plan to build a 7,200-animal operation outside tiny Bartelso, popu-



STEVE NAGY/News-Democrat

Grain, stored in these silos, and feed for the hogs are regulated by computers.

lation 600.

Board Chairman Ray Kloeckner of Germantown, himself the owner of a 500-animal pork farm, abstained from the voting, and two other members were absent. Still, Kloeckner outlined the board's reasons for the opposition — odor, damage to local roads by heavy grain trucks and threats to the water supply.

"The facility is a mile and a quarter straight south of Bartelso. With the prevailing winds coming from the south, the odor would be brought into town," Kloeckner said.

"Another problem was that the facility will be in a 100-year flood plain, and there was concern about how close it was from the bottom of a pit they would use to store manure to the top of the aquifer."

Kloeckner said some residents were worried that pig manure could get in the water supply if the storage pit, or manure lagoon, broke through the rock ceiling of the underground aquifer.

Final say for the project comes from the Illinois Department of Agriculture.

Warren Goetsch, manager of the department's Division of Natural Resources, said of 19 large-scale hog farms proposed since 1999 that exceeded 1,000 animals and therefore needed state approval, eight were not licensed.

"We never really turn anyone down," Goetsch said. He explained that public outcry often results in stiffer requirements set by the state that cannot economically be met.

As for the Bartelso proposal, Goetsch said the state has asked for more information about how manure will be handled.

The proposed pork farm, slated for farm land owned by Mike and Diane Mueller on Twin Levee Road, will have an underground manure pumping system with no open lagoons, Goetsch said. This means that what odor does result will come from treated manure spread on fields as fertilizer to produce some of the grain it takes to grow the hogs.

Goetsch said modern techniques used by the Maschhoffs minimize the odor by injecting manure 8 to 10 inches into the plowed soil using high pressure hoses.

"There is so much a producer can do to control odor, whether it's the type of feed they use, or the type of fan system or the type of cleanliness inside the buildings," Goetsch said, "There are all types of odor-control methods."

Still, opposition nationwide to so-called "factory farms" has resulted in strident criticism. One opponent who testified in March in Washington before the Senate Committee on Government Affairs titled his presenta-

tion, "Industrial Pork Factories: A Threat To The Economy, The Environment, And Our Democracy."

The Maschhoffs say they use every scientific tool available to produce better hogs and to control odor and pollution. They even have a laboratory to produce hog semen for breeding.

And the Maschhoffs were among the first in the country to introduce contracting networks, which is the way the Bartelso expansion has been presented.

That means Mike and Diane Mueller would still own the land and would run the operation, but the Maschhoffs would own a large share of it.

And it's the Muellers, not some local or state government, who would make the final decision about whether to go into business with the Maschhoffs.

When it comes to containing opposition at the local level in Bartelso, that approach may work well.

No one, from a clerk at a convenience store in Bartelso to a postal worker on his route, would speak on the record, even though some said privately they were highly opposed to the hog farm.

As the bartender at Snick's Tavern in Bartelso explained: "Hey, nobody wants to bad-mouth Mike and Diane. They're friends. The Maschhoffs? That's different; they're millionaires."

Sept. 2002

Successful Farming

Up front

Marketing strategies and farm news impacting your business and family compiled by the editors of SF®

■ It's a big drought, will farmers get big help?

Drought, crop size, and disaster assistance for farmers are dominating agricultural news as farmers head into the main harvest season of 2002.

● **Drought:** The worst of the drought is in the western half of the U.S., where 75% of range and pastures are in poor or very poor condition, and many cattle herds have been sold off. There were big pockets of drought just about everywhere this summer. In Illinois and Indiana, farmers compare it to 1988, their last big drought when many harvested about half a crop.

The National Oceanic and Atmospheric Administration (www.noaa.gov/) says that 49% of the contiguous U.S. was in moderate to extreme drought at the end of July, based on the Palmer Drought Index. (The worst ever was in 1934, when

80% of the country was in moderate to extreme drought). Six states in such divergent areas as the Southeast and the Rocky Mountains had their driest 12-month periods on record.

● **Crop size:** All eyes point to September 12 and the USDA's next production report. The August report caught many people by surprise, with corn, soybean, and wheat estimates all dropping about 10%. In drought years, crop estimates often get smaller as harvest progresses and the damage becomes more obvious.

● **Disaster assistance:** There will be help for impacted farmers and ranchers, maybe \$3 billion, and plenty more talk about help (it's an election year!). As Congress reconvenes this month, the debate will center on where the money should come from. Because of higher prices, your LDP payments and countercyclical assistance payments

will shrink, saving the government money it had previously committed.

Should disaster funds offset that "saved" money, or should it come from somewhere else? The Bush administration favors offset, because the Farm Bill promised to end stopgap assistance to farmers. But Congress may argue that disaster help has always come from new funding. The end result will likely be a compromise, as everyone agrees help is needed.

■ Expanding in a down hog market

While many pork producers are grinding their teeth over cheap hogs and expensive feed this fall, Illinois producer Ken Maschhoff is thinking positive. Maschhoff Pork, Inc. in Carlyle has added more than 10,000 sows in the past year, bringing its total to 35,500. Another 10,000 sows are



scheduled to be added in the next year.

That kind of expansion in a down market "fits the bill for us," says Maschhoff. "The time to expand is when nobody else is doing it. That's been our mode; we added few sows in years like 1997 and 2000."

How will it work? With the potential for \$3.50 corn this fall, Maschhoff expects some producers to liquidate sows. This will drive the hog market down further initially, but cause a nice bump up by next summer, right in time for his production from the new sows to head to slaughter, he says. "We want the first pigs out of our expansion to hit the cycle at the right time."

As for feed costs, Maschhoff had corn and soybean meal board positions secured for the next year well before the summer grain rally. "We never leave inputs to chance. It will cost you a small amount three out of four years,

but in years like 1996 and this year, it makes up two- or threefold."

(Read more about this farm and others on our new Pork Powerhouse™ list in October's issue.)

Farmland now beats the 'Street'

Investing in Indiana farmland has outperformed Wall Street over the past 13 years, says Chris Hurt, Purdue University ag economist.

In an analysis of the two investments, Hurt compared \$1,000 investments in farmland and in the stocks within the Standard & Poor's 500 index in 1990 and through the nearly 13-year period ending July 31, 2002.

Stock earnings were based on annual returns and dividends; farmland earnings were based on annual returns plus land value appreciation, minus certain expenses. Income tax conse-

quences were not factored in.

While average returns by annual percentage growth were slightly higher in stocks, Indiana farmland came out ahead in total returns. The S&P 500 experienced greater annual highs and lows during, while farmland values and returns inched up steadily.

"Since 1990 the stock market has had a higher average annual return – about 11.3% – but farmland has had a return of 11% percent," Hurt says.

"What is interesting is that \$1,000 invested in the stock market in 1990 had grown to more than \$5,000 by 1999, where farmland had grown to only about \$3,000," Hurt says. "Since 1999, however, the stock market has fallen on hard times. Now \$1,000 invested in farmland in 1990 has accumulated about \$3,800 on a pretax basis, while the stock value now stands at about \$3,300."

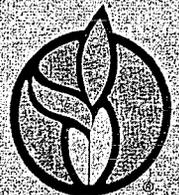
"Golden Harvest was a top yielder for us and we had nothing but success in this area last year. I not only believe in the Golden Harvest product, I believe in the company."

Duane Dozier, Morrisonville, IL

Reliability

800-610-7333 www.goldenharvestseeds.com

Owned and managed by: Garwood Seed Co., Stonington, IL / Golden Seed Co., L.L.C., Cordova, IL / Robinson Seeds, Waterloo, NE / Sommer Bros. Seed Co., Pekin, IL / Thorp Seed Co., Clinton, IL / 09025fe ©2002 Golden Harvest Seeds, Inc. Golden Harvest is a registered trademark of Golden Harvest Seeds, Inc.



Golden Harvest

ORIGINAL

RECEIVED
CLERK'S OFFICE
JUL 28 2003
STATE OF ILLINOIS
Pollution Control Board

STATE OF ILLINOIS)
) ss
COUNTY OF SANGAMON)

AFFIDAVIT

I, JANE E. MCBRIDE, after being duly sworn and upon oath, state as follows:

1. I am the Assistant Attorney General assigned to the matter of *People v. The Highlands, LLC and Murphy Farms, Inc. (a division of Murphy-Brown, LLC, a North Carolina limited liability corporation, and Smithfield Foods, Inc., a Virginia corporation, PCB 00-104, and* counsel of record for the Complainant in this matter.

2. I am executing this Affidavit to accompany Complainant's Response to Respondent's Motion for Summary Judgment on Count I of the Amended Complaint.

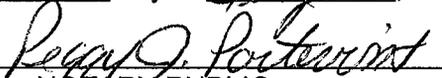
3. The assertions set forth in Complainant's Response to Respondent's Motion for Summary Judgment on Count I of the Amended Complaint are true, correct and accurate, to the best of Affiant's knowledge and belief.

Further, Affiant sayeth not.

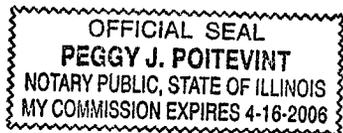


JANE E. MCBRIDE

Subscribed and sworn to before me
this 25th day of July, 2003.



NOTARY PUBLIC



ORIGINAL



RECEIVED
CLERK'S OFFICE
JUL 28 2003
STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 25, 2003

The Honorable Dorothy Gunn
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. The Highlands, LLC., et al.***
PCB No. 00-104

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING and RESPONSE TO RESPONDENT HIGHLANDS, LLC'S MOTION FOR SUMMARY JUDGMENT ON COUNT I OF THE AMENDED COMPLAINT in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jane E. McBride".

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

JEM/pp
Enclosures