

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on September 22, 2016, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois Notice of Filing, Stipulation and Proposal for Settlement of Count I with Respondents Hilltop View, LLC and Professional Swine Management, Stipulation and Proposal for Settlement of Count II with Respondents Wildcat Farms, LLC and Professional Swine Management, LLC, Stipulation and Proposal for Settlement of Count III with Respondents High-Power Pork, LLC and Professional Swine Management, LLC, Stipulation and Proposal for Settlement of Count IV with Eagle Point Farms, LLC and Professional Swine Management, LLC, Stipulation and Proposal for Settlement of Count V with Respondents Lone Hollow, LLC

and Professional Swine Management, LLC, Stipulation and Proposal for Settlement of Count VI with Timberline, LLC and Professional Swine Management, LLC, Stipulation and Proposal for Settlement of Count VII with Respondents Prairie State Gilts, LTD and Professional Swine Management, LLC, Stipulation and Proposal for Settlement of Count VIII with Little Timber, LLC and Professional Swine Management, LLC, and Motion for Relief from Hearing Requirements, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN

Attorney General of the State of Illinois

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

BY: s/ Jane E. McBride

JANE E. McBRIDE

Assistant Attorney General

Attorney Reg. No. 6229802

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[jmcbride@atg.state.il.us](mailto:jmcbride@atg.state.il.us)

[ebs@atg.state.il.us](mailto:ebs@atg.state.il.us)

Dated: September 22, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that I did on September 22, 2016, caused to be served by electronic mail, a true and correct copy of the following instruments entitled Notice of Filing, (8) Stipulations and Proposal for Settlements, and Motion for Relief from Hearing upon the following persons:

Pollution Control Board, Attn: Clerk  
100 West Randolph Street  
James R. Thompson Center, Suite 11-500  
Chicago, Illinois 60601-3218  
(Via Electronic Filing)

Carol Webb, Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, Illinois 62794  
carol.webb@illinois.gov  
(Via Email)

Claire A Manning, Esq.  
Brown, Hay & Stephens LLP  
205 S. 5th Street, Suite 700  
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Edward Dwyer  
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25043 Little Water Lane  
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Custer, SD 57730-0767  
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(Via Email)

s/Jane E. McBride  
JANE E. McBRIDE  
Assistant Attorney General  
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(217) 782-9031  
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[ebs@atg.state.il.us](mailto:ebs@atg.state.il.us)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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 Complainant, )  
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 PROFESSIONAL SWINE MANAGEMENT, LLC, )  
 an Illinois limited liability corporation, and )  
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 corporation, WILDCAT FARMS, LLC, an Illinois )  
 limited liability corporation, HIGH-POWER )  
 PORK, LLC, an Illinois limited liability )  
 corporation, EAGLE POINT FARMS, LLC, an )  
 Illinois limited liability corporation, )  
 LONE HOLLOW, LLC, an Illinois limited )  
 liability corporation, TIMBERLINE, LLC, )  
 an Illinois limited liability corporation, )  
 PRAIRIE STATE GILTS, LTD, an Illinois )  
 corporation, LITTLE TIMBER, LLC, an )  
 Illinois limited liability corporation, )  
 )  
 Respondents. )

PCB NO. 10-84  
(Enforcement)

**STIPULATION AND PROPOSAL FOR SETTLEMENT OF COUNT I WITH RESPONDENTS  
HILLTOP VIEW, LLC AND PROFESSIONAL SWINE MANAGEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondents HILLTOP VIEW, LLC ("Hilltop View") and PROFESSIONAL SWINE MANAGEMENT, LLC ("PSM") (collectively "Respondents") have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This Stipulation is with regard to and concerns only the allegations against the Respondents contained in Count I of the Second Amended Complaint. This Stipulation is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the

Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.*, and the Board's regulations, alleged in Count I of the Second Amended Complaint, except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

## I. STATEMENT OF FACTS

### A. Parties to the Stipulation

1. On December 13, 2012, a Second Amended Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois. Count I was brought on the Attorney General's own motion pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e), against the Respondents.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4.

3. Hilltop View is and was at all times relevant to Count I of the Second Amended Complaint an Illinois limited liability company, registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count I, Hilltop View owned a swine farrowing and gestation facility with a design capacity of 7,800 sows located at 2071 East Meadow Lark Lane, Rushville, Schuyler County, Illinois 62681 (the "site" or "facility"). The legal description is the Southwest quarter of Section 16, T.3N, R.1W of the 4<sup>th</sup> principal meridian, in Oakland Township, Schuyler County, Illinois. The site is within the Sugar Creek watershed.

4. PSM is and was at all times relevant to Count I an Illinois limited liability company registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count I, in accordance with an agreement between the Respondents, PSM provided management services to Hilltop View for the Hilltop View facility.

**B. Allegations of Non-Compliance**

Complainant and the Illinois EPA contend that the Respondents have violated the following provisions of the Act and Board regulations and allege the following facts:

1. On June 16, 2006, the Illinois EPA inspected the Hilltop View facility. No swine were present at the site and no confinement buildings had been constructed, but earthwork had been started. An estimated 15 to 20 acres had been disturbed as a footprint for the swine confinement buildings. A raised entrance/parking area had been constructed. No erosion controls were in place at the Hilltop View site at the time of inspection. Recent excavation had occurred adjacent to Sugar Creek on the north side of the Meadow Lark Road bridge and adjacent to the west bank of Sugar Creek. Due to dry conditions, no surface runoff was observed.

2. At the time of the June 16, 2006 inspection, a concrete batch plant was set up at the Hilltop View site. Concrete materials were stockpiled at the Hilltop View site. An eroded channel existed near the stockpile. The channel drained east for a distance of about 400 feet into Sugar Creek. Sugar Creek is a water of the State and a water of the United States. During the inspection, numerous semi-trucks arrived with concrete materials, dumped the concrete material and departed.

3. At the time of the June 16, 2006 inspection, Respondents did not have a National Pollution Discharge Elimination System ("NPDES") Stormwater Permit for the Hilltop View facility.

4. On June 20, 2006, the Illinois EPA issued a Violation Notice ("VN") to the facility for storm water violations and for failure to obtain a NPDES storm water permit prior to construction activity. A copy of the VN was sent to both Hilltop View, LLC and Professional Swine Management, LLC. These VNs were based on the June 16, 2006 storm water inspection.

5. On June 21, 2006, the Illinois EPA received a completed Notice of Intent for attaining a General Permit to Discharge Storm Water for Construction Site Activities ("NOI"). The Illinois EPA issued NPDES coverage to the site on July 21, 2006.

6. Illinois EPA Bureau of Water Field Operations Section inspectors performed a storm water inspection at Hilltop View on November 15, 2006. Minimal earthwork was underway and silt fencing had been installed to minimize storm water erosion. The silt fencing present at the Hilltop View site was inadequate to meet the requirements of the regulations. Additional silt fence was needed in two areas of the Hilltop View site and some existing silt fencing needed to be reset. The stormwater construction regulations require that controls be maintained.

7. On May 28, 2009, the Illinois EPA conducted an inspection of the Hilltop View facility. At the time of the inspection, livestock wastewater from a land application field associated with the Hilltop View facility existed pooled in the north ditch of Meadow Lark Lane approximately one-eighth mile west of the Hilltop View swine facility. The Hilltop View facility was land applying livestock waste to a field adjacent to the ditch. The pooled waste came from a low spot where waste had been applied, that drained into the ditch. The north ditch of Meadow Lark Lane drains to an unnamed tributary of the West Branch of Sugar Creek. The unnamed tributary of the West Branch of Sugar Creek is identified as an intermittent creek on the United State Geological Survey ("USGS") topographic map. The West Branch of Sugar Creek is identified as a perennial creek on the USGS topographic map. The roadside ditch has a surface hydrological connection to the unnamed tributary and the West Branch of Sugar Creek. The discharge to the roadside ditch was a discharge to waters of the United States and, as such, it was a discharge in violation of the State and federal NPDES regulations.

8. On May 28, 2009, the Hilltop facility did not have an NPDES permit for point source discharges.

9. A discharge from a facility with more than 2,500 swine over 55 pounds must be covered by an NPDES permit. Land application discharges from a Confined Animal Feeding Operation ("CAFO") are subject to NPDES requirements. Respondents failed to obtain coverage of the discharge prior to the event of the discharge.

10. Count I of the Second Amended Complaint alleges that the above actions and/or omissions caused, threatened or allowed the discharge of sediments and eroded soils upon the land and into waters of the State so as to alter the physical or chemical properties of the waters and create or likely create a nuisance and thereby violated Sections 12(a), 12(d) and 12(f) of the Act, 425 ILCS 5/12(a), (d), (f), and 35 Ill. Adm. Code 309.102(a).

**C. Non-Admission of Violations**

The Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondents do not affirmatively admit the allegations of violation within Count I of the Second Amended Complaint and referenced within Section I.B herein, or the alleged facts, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

1. In response to the construction storm water general NPDES permit coverage issue, a completed NOI was submitted to Illinois EPA, which Illinois EPA received on June 21, 2006. The Illinois EPA issued general NPDES stormwater permit coverage for the Hilltop View site on July 21, 2006.

2. In response to the Illinois EPA's determination of inadequate silt fencing, Respondents added silt fencing and reset existing fencing as suggested by the Illinois EPA inspector.

3. In response to the runoff of manure during land application into the road ditch observed at the time of the May 28, 2009 inspection, Respondents pumped the manure from the road ditch using vacuum trucks. The Respondents used shovels to cut channels and form a sump in the ditch, which collected the manure and helped facilitate removal. The removed manure was properly land applied. The Respondents then placed two dump truck loads plus approximately four loader buckets of sawdust and wood chips into the ditch to absorb all remaining liquid. The Illinois EPA inspector instructed the Respondents to keep the sawdust and wood chips in the ditch long enough to absorb liquid and dry out to facilitate removal. The Respondents were instructed to excavate and properly land apply the manure soaked sawdust and wood chips, or dispose of it in the facility's compost unit.

4. In a letter dated April 12, 2010, the Respondents informed the Illinois EPA of all steps Respondents took to address the runoff in the ditch. Also in that letter, the Respondents advised the Illinois EPA that the third party land applicators were observing setbacks from the road ditch and avoiding historical wet spots to prevent runoff from entering the road ditch. The Respondents contend that no other releases to the road ditch from the Hilltop View facility or associated land application fields have occurred.

5. On May 22, 2015, Respondent Hilltop View produced an aerial map prepared by its consulting engineer showing the 200 foot by 75 foot area with 10 foot buffer that is excluded from the available land application acreage for the facility's Field 25H. This is the area from which livestock waste run off discharged to the roadside ditch on May 28, 2009. A statement that the area is excluded from available land application acreage is included in the map.

Respondent Hilltop View confirmed that the map and statement have been incorporated into Hilltop View's current Comprehensive Nutrient Management Plan ("CNMP") and that it will be provided to Hilltop View's custom applicators with instructions to exclude this area when land applying.

## II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board regulations for all violations alleged in Count I of the Second Amended Complaint, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42.

The Respondents shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondents shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondents under this Stipulation. In the event that the Respondents propose to sell or transfer any real property or operations subject to this Stipulation, the Respondents shall notify the Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondents shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondents site access and all cooperation necessary for Respondents to perform to completion any compliance obligation(s) required by this Stipulation. The Respondents shall provide a copy of this Stipulation to any such successor in interest and the Respondents shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondents and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondents. This provision does not relieve the Respondents from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2014), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the fact and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;

2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution sources; and
5. any subsequent compliance.

In response to these factors, the parties to this Stipulation state the following:

1. The environment was threatened by the commencement of construction of the Hilltop View facility without coverage under the construction storm water general NPDES permit, by inadequate silt fencing at the construction site, and by the discharge of manure from the Hilltop View facility's land application field into a ditch that has surface hydrological connection to and drains to waters of the United States.

2. There is social and economic benefit to the facility when it operates in compliance with environmental regulations.

3. Operation of the Hilltop View facility is suitable for the area in which it is located.

4. It is technically practicable and economically reasonable for the Hilltop View facility to have obtained coverage under the construction storm water general NPDES permit prior to commencing construction activities, to have had adequate silt fencing during construction activities, and to operate without discharges of livestock waste to the environment.

5. Upon adherence to the terms and conditions of this settlement agreement, Respondents have subsequently complied with the Act and the Board regulations.

#### IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties to this Stipulation state as follows:

1. At the time of Illinois EPA's June 16, 2006 inspection of the Hilltop View site, the Respondents had commenced construction without first submitting an NOI to Illinois EPA for coverage under the construction storm water general NPDES permit. On June 21, 2006, the

Illinois EPA received a completed NOI for the Hilltop View site. Illinois EPA issued construction storm water general NPDES permit coverage to the Hilltop View site on July 21, 2006.

On May 28, 2009, livestock wastewater existed pooled in the north ditch of Meadow Lark Lane approximately one-eighth mile west of the Hilltop View swine facility. The Hilltop View facility's third party land applicator was land applying livestock waste to a field adjacent to the ditch. The pooled waste came from a low spot where waste had been applied, that drained into the ditch. In a letter dated April 12, 2010, the Respondents informed the Illinois EPA of all steps Respondents took to address the May 28, 2009 land application field runoff to the ditch. Respondents contend these actions were taken timely in response to the field inspectors instructions at the time of the runoff incident. In the April 12, 2010 letter, Respondents advised that the third party land applicators would observe setbacks from the road ditch in the future and avoid historical wet spots to prevent runoff from entering the road ditch. The Respondents contend that no other releases to the road ditch from the Hilltop View facility or associated land application fields have occurred.

2. Complainant contends that Respondents did not recognize and stop violations on their own volition. However, upon notice and direction from Illinois EPA, the Respondents timely corrected violations and, in the case of the land application discharge, remediated the manure discharge.

3. Complainant contends that the NPDES stormwater permit violations and the land application field manure discharge resulted in economic benefit, albeit nominal economic benefit. Respondents would have reduced the risk of construction storm water permitting violations if they had obtained NPDES storm water permit coverage for the site prior to commencing construction. Respondents would have reduced the risk of silt runoff with adequate silt fencing. Respondents would have reduced the risk of a discharge of manure from

land application if they had been more diligent in ensuring that land application was conducted observing setbacks from the road ditch and avoiding historical wet spots to prevent runoff from entering the road ditch.

4. Complainant contends, based upon the specific facts of this matter, that the assessment of a penalty of Fourteen Thousand Five Hundred dollars (\$14,500.00) jointly and severally to Respondents will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent Hilltop View has no previously adjudicated violations of the Act. Allegations of violation have been asserted against Respondent Professional Swine Management in Counts II through VIII of the Second Amended Complaint. On March 1, 2007, the Board entered an order against Professional Swine Management in the matter of *People v. Pinnacle Genetics, LLC and Professional Swine Management*, PCB 07-29, that required payment of a civil penalty in the amount of \$27,000 and included an order to cease and desist from future violations.

6. The Respondents reported the release of manure from the land application field, pursuant to the requirements of 35 Ill. Adm. Code 580, via telephone on May 28, 2009, the same day the discharge was discovered by the Illinois EPA inspector, and via a follow-up report the following day, May 29, 2009.

7. The settlement of this matter does not include a supplemental environmental project.

**V. TERMS OF SETTLEMENT**

**A. Penalty Payment**

1. The Respondents shall, jointly and severally, pay a civil penalty in the sum of Fourteen Thousand Five Hundred Dollars (\$14,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

**B. Stipulated Penalties, Interest and Default**

1. If the Respondents fail to complete the requirements of Section V.D.4 of this Stipulation by the date specified in that section, the Respondents shall provide notice to the Complainant and the Illinois EPA of each failure to comply with that section and shall pay stipulated penalties in the amount of One Hundred Dollars (\$100.00) per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondents for their noncompliance with that section. All stipulated penalties shall be payable within thirty (30) calendar days of the date of Complainant's demand.

2. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name, case number and the Respondents' federal tax identification numbers shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

1. Respondents shall continue to ensure that all land application of livestock wastes from the Hilltop View facility shall be conducted so that facility or contract applicators observe setbacks from the road ditches and other waterways and avoid historical wet spots within land application fields to prevent runoff from entering road ditches or other waterways. As to Respondent PSM, this Section V.D.1's requirements shall only be operative when Respondent PSM is coordinating land application activities pursuant to a contract with Respondent Hilltop View.

2. Respondent Hilltop View commits that it (i) does not and will not use the same land application areas as any other livestock management facility; (ii) does not and will not transfer dead animals to and from any other livestock management facility; and (iii) does not

and will not share dead animal disposal or handling facilities with any other livestock management facility. Respondent Hilltop View's CNMP shall be updated to include the provisions of this paragraph within sixty (60) days from the date the Board adopts and accepts this Stipulation.

3. Respondents shall comply with all applicable requirements in 35 Ill. Adm. Code Sections 502.102 and 502.510(b), and shall ensure that Respondent Hilltop View's CNMP is updated to comply with the same prior to submittal pursuant to paragraph V.D.4 below of this Stipulation.

4. Within six (6) months from the date the Board adopts a Final Order accepting this Stipulation, Respondents shall submit Respondent Hilltop View's CNMP, as updated to comply with the requirements of paragraphs V.D.2 and V.D.3 above of this Stipulation, to the Illinois EPA and the Attorney General.

5. The Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of Count I of the Second Amended Complaint.

6. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary, but will observe all protocols established by the facility to ensure safety of the animals and public health, including those protocols restricting entry into the building structures.

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

**E. Release from Liability**

In consideration of the Respondents' payment of the \$14,500.00 penalty, Respondents' completion of all activities required hereunder, Respondents' agreement to cease and desist from future violation of the Act and the Board's regulations as stipulated in Section V.D.5, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of Count I of the Second Amended Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Second Amended Complaint filed on December 13, 2012. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

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

**F. Correspondence, Reports and Other Documents**

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

As to the Complainant

Jane E. McBride  
Assistant Chief  
Environmental Bureau  
500 South Second Street  
Springfield, IL 62706

Michael Roubitchek  
Assistant Counsel  
Illinois EPA  
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Springfield, IL 62794-9276

David Ginder  
Bureau of Water  
Springfield Regional Office  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

As to Respondent Hilltop View

Edward W. Dwyer  
HeplerBroom, LLC  
3150 Roland Avenue  
Springfield, IL 62703

As to Respondent PSM

Charles T. Patterson  
Patterson & Prah, LLP  
25043 Little Water Lane  
P.O. Box 767  
Custer, SD 57730-0767

**G. Enforcement and Modification of Stipulation**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. The Complainant, in consultation with the Illinois EPA, and the Respondents may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section V.F. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party to this Stipulation.

**H. Execution of Stipulation**

The undersigned representatives for each party to this Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:   
ANDREW B. ARMSTRONG, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 09/21/2016

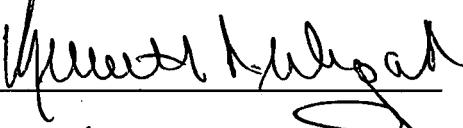
FOR THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

ALEC MESSINA, Acting Director  
Illinois Environmental Protection Agency

BY:   
JOHN J. KIM  
Chief Legal Counsel

DATE: 9/19/16

HILLTOP VIEW, LLC

BY:   
Name: Bevanne Wright  
Title: President

DATE: 8/30/2016

PROFESSIONAL SWINE MANAGEMENT, LLC

BY:   
Name: Ted R. Utkes  
Title: COO - Professional Swine Mgmt

DATE: 8/30/2016

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PCB NO. 10-84  
(Enforcement)

**STIPULATION AND PROPOSAL FOR SETTLEMENT OF COUNT II WITH RESPONDENTS  
WILDCAT FARMS, LLC AND PROFESSIONAL SWINE MANAGEMENT, LLC**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and the Respondents WILDCAT FARMS, LLC ("Wildcat") and PROFESSIONAL SWINE MANAGEMENT, LLC ("PSM") (collectively "Respondents") have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This Stipulation is with regard to and concerns only the allegations contained in Count II of the Second Amended Complaint. This Stipulation is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.*, and the Board's regulations alleged in Count II of

the Second Amended Complaint. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

## I. STATEMENT OF FACTS

### A. Parties to the Stipulation

1. On December 13, 2012, a Second Amended Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31, against the Respondents.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4.

3. Respondent Wildcat is and was at all times relevant to Count II of the Second Amended Complaint an Illinois limited liability company registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count II, Respondent Wildcat owned a swine farrowing and gestation facility with a design capacity of 6,000 sows located at 2558 North County Road 2150, Dallas City, Hancock County, Illinois 62330 (the "Wildcat site" or "Wildcat facility"). The legal description is Section 28, T7N, R6W of the 4<sup>th</sup> P.M. in Hancock County. The Wildcat site is within the Wildcat Creek watershed.

4. Respondent PSM is and was at all times relevant to Count II, an Illinois limited liability company, registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count II, in accordance with an agreement between the Respondents, PSM provided management services to Wildcat for the Wildcat facility.

### B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondents have violated the following provisions of the Act and Board regulations and allege the following facts:

1. An individual mowing the lawn at the Wildcat facility mowed over the gilt developer barn's northeast cleanout, cutting its elevation to ground level. Sometime after the cleanout pipe was damaged, a boar harness became stuck in the buried PVC drain pipe downstream from the broken cleanout pipe. Swine manure backed up in the plugged line and, on September 18, 2008, flowed out of the pipe where the cleanout had been cut down to ground level. A manure stream approximately two feet wide and 200 yards long flowed out of the cleanout, down the field in a northeasterly direction along a drainage channel where it entered an unnamed tributary to Wildcat Creek.

2. On September 23, 2008, the Illinois EPA conducted an inspection of the Wildcat facility. At the time of the inspection, an accumulation of swine manure remained in various locations along the release drainage path at the Wildcat facility. The Illinois EPA inspector advised facility personnel to clean-up the remaining swine manure.

3. At the time of the September 23, 2008 inspection, the drainage path which flows into the unnamed tributary had been dammed by personnel at a location prior to entry into the unnamed tributary. Prior to damming of the waterway, manure had entered the unnamed tributary. Although no dead fish were observed, the inspector experienced the odor of dead fish in the unnamed tributary of Wildcat Creek. At the time of the September 23, 2008 inspection, the Illinois EPA inspector collected samples of the discharge and receiving waters. A sample was collected from an accumulation of liquid in the flow path of the manure release. The liquid was turbid, dark-colored and contained a strong swine waste odor. Sample analysis indicated the following parameter levels: ammonia, 1220 mg/l; TSS, 810 mg/l; fecal coliform, 16,000 per 100 ml. A sample was collected from the unnamed tributary to Wildcat Creek 50 yards downstream of the previous sample collection site. It was the receiving water of the release. There were black bottom deposits in the stream. The sample was collected after the bottom deposits were disturbed. The stream contained a swine waste odor. Sample analysis indicated

the following parameter levels: ammonia, 28.5 mg/l; TSS, 590 mg/l; fecal coliform, 53,000 per 100 ml.

4. At the time of the September 18, 2008 discharge to Wildcat Creek, neither Respondent Wildcat Farms, LLC or Respondent Professional Swine Management had a National Pollution Discharge Elimination System Permit ("NPDES") for the Wildcat facility, nor had the Respondents applied for one. The discharge from the cleanout at the Wildcat facility is a point source discharge. The discharge to the unnamed tributary that flowed into Wildcat Creek was a discharge to waters of the United States.

5. Count II of the Second Amended Complaint alleges that the above actions and/or omissions caused, threatened or allowed the discharge of contaminants upon the land and into waters of the State so as to alter the physical or chemical properties of the waters and create or likely create a nuisance and thereby violated Sections 12(a), 12(d), and 12(f) of the Act, 415 ILCS 5/12(a), (d), (f), 35 Ill. Adm. Code 302.203 and 35 Ill. Adm. Code 309.102(a).

**C. Non-Admission of Violations**

The Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondents do not affirmatively admit the allegations of violation within Count II of the Second Amended Complaint and referenced within Section I.B herein, or the alleged facts, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

1. In response to the release, Respondents placed a temporary dam across the drainage path and blocked three culverts at the facility's gravel lane. Respondents also placed three small earthen dams across the small stream north of (downstream from) the gravel lane. Sawdust was placed in the flow path to absorb manure.

2. The cleanout that was the source of the spill was repaired the day of the release. As documented in Illinois EPA's May 12, 2011 inspection report, the Respondents extended all cleanout pipes upward and installed protective barriers around all cleanouts to protect the pipes from mobile ground equipment to avoid damage in the future.

## II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA, and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board regulations for all violations alleged in Count II of the Second Amended Complaint, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42.

The Respondents shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondents shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondents under this Stipulation. In the event that the

Respondents propose to sell or transfer any real property or operations subject to this Stipulation, the Respondents shall notify the Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility, or a portion thereof. The Respondents shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondents site access and all cooperation necessary for Respondents to perform to completion any compliance obligation(s) required by this Stipulation. The Respondents shall provide a copy of this Stipulation to any such successor in interest and the Respondents shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondents and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondents. This provision does not relieve the Respondents from compliance with any regulatory requirements regarding notice and transfer of applicable facility permits.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2014), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;

4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties to this Stipulation state the following:

1. The environment was threatened by the discharge and release of livestock waste from the facility.
2. There is social and economic benefit to the Wildcat facility when it operates in compliance with environmental regulations.
3. Operation of the Wildcat facility is suitable for the area in which it is located.
4. It is technically practicable and economically reasonable for the Wildcat facility to operate without discharges of manure to the environment.
5. Upon adherence to the terms and conditions of this settlement agreement, Respondents have subsequently complied with the Act and the Board regulations.

#### **IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h)(2014), provides as follows:

In determining the appropriate civil penalty to be imposed under...this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing

voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection I of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties to this Stipulation state as follows:

1. The Respondents had an unpermitted discharge when swine manure backed up a plugged line and, on September 18, 2008, flowed out of a pipe where the cleanout had been inadvertently mowed over to ground level. A manure stream approximately two feet wide and 200 yards long flowed out of the cleanout, down a field in a northeasterly direction along a drainage channel where it entered an unnamed tributary to Wildcat Creek. The facility took initial steps to stop the discharge flow. At the time of the September 23, 2008 inspection, waste material remained in the flow path. The facility was instructed to completely clean up the waste material and dispose of it properly.

2. Respondents took action to stop the flow of the discharge but failed to timely clean up all of the waste material and properly dispose of it.

3. Complainant contends that the manure discharge resulted in nominal economic benefit. Respondents would have reduced the risk of a release of manure from a broken cleanout pipe if it had previously installed protective barriers around the cleanout pipes to avoid damage from mobile equipment, and if they would have immediately repaired the clean-out port at the time the damage occurred.

4. Complainant contends, based upon the specific facts of this matter, that the assessment of a penalty of Ten Thousand Five Hundred Dollars (\$10,500.00), jointly and

severally to Respondents will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent Wildcat Farms, LLC has no previously adjudicated violations of the Act. Allegations of violation have been asserted against Respondent Professional Swine Management in Counts I and III through VIII of the Second Amended Complaint. On March 1, 2007, the Board entered an order against Professional Swine Management in the matter of *People v. Pinnacle Genetics, LLC and Professional Swine Management*, PCB 07-29, that required payment of a civil penalty in the amount of \$27,000 and included an order to cease and desist from future violations.

6. The Respondents reported the release, pursuant to the requirements of 35 Ill. Adm. Code 580 at the time it was discovered on September 18, 2008.

7. The settlement of this matter does not include a supplemental environmental project.

## V. TERMS OF SETTLEMENT

### A. Penalty Payment

1. The Respondents shall, jointly and severally, pay a civil penalty in the sum of Ten Thousand Five Hundred Dollars (\$10,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

### B. Stipulated Penalties, Interest and Default

1. If the Respondents fail to complete the requirements of Section V.D.4 of this Stipulation by the date specified in that section, the Respondents shall provide notice to the Complainant and the Illinois EPA of each failure to comply with that section and shall pay stipulated penalties in the amount of One Hundred Dollars (\$100.00) per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon

the Respondents for their noncompliance with that section. All stipulated penalties shall be payable within thirty (30) calendar days of the date of Complainant's demand.

2. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name, case number and the Respondents' federal tax identification numbers shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, IL 62706

**D. Future Compliance**

1. Respondents shall continue to ensure that all mobile equipment operators avoid the cleanout riser pipes at the Wildcat facility and that the protective barriers installed around the cleanout riser pipes are adequately maintained to assist mobile equipment operators in avoiding the cleanout riser pipes, and thereby prevent future damage. As to Respondent PSM, this Section V.D.1's requirement shall only be operative when Respondent PSM is coordinating mobile equipment activities and protective barriers pursuant to a contract with Respondent Wildcat.

2. Respondent Wildcat commits that it (i) does not and will not use the same land application areas as any other livestock management facility; (ii) does not and will not transfer dead animals to and from any other livestock management facility; and (iii) does not and will not share dead animal disposal or handling facilities with any other livestock management facility. Respondent Wildcat's Comprehensive Nutrient Management Plan ("CNMP") shall be updated to include the provisions of this paragraph within sixty (60) days from the date the Board adopts and accepts this Stipulation.

3. Respondents shall comply with all applicable requirements in 35 Ill. Adm. Code Sections 502.102 and 502.510(b), and shall ensure that Respondent Wildcat's CNMP is updated to comply with the same prior to submittal pursuant to paragraph V.D.4 below of this Stipulation.

4. Within six (6) months from the date the Board adopts and accepts this Stipulation, Respondents shall submit Respondent Wildcat's CNMP, as updated to comply with the requirements of paragraphs V.D.2 and V.D.3 above of this Stipulation, to the Illinois EPA and the Attorney General.

5. Respondent Wildcat shall notify Illinois EPA in writing within 30 days of the date the Board adopts and accepts this Stipulation that it withdraws its application for NPDES permit coverage, previously submitted on May 7, 2009.

6. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Wildcat facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary, but will observe all protocols established by the facility to ensure safety of the animals and public health, including those protocols restricting entry into the building structures.

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

8. Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of Count II of the Second Amended Complaint.

**E. Release from Liability**

In consideration of the Respondents' payment of the \$10,500.00 penalty, Respondents' adherence to all activities required hereunder, Respondents' agreement to cease and desist from future violation of the Act and the Board's regulations as stipulated in Section V.D.8, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of Count II of the Second Amended Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Second Amended Complaint filed on December 13, 2012. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

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

**F. Correspondence, Reports and Other Documents**

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

As to the Complainant

Jane E. McBride  
Assistant Chief  
Environmental Bureau  
500 South Second Street  
Springfield, IL 62706

Michael Roubitchek  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

Eric Ackerman  
Bureau of Water  
Peoria Regional Office  
412 S.W. Washington Street, Suite D  
Peoria, IL 61602

As to Respondent Wildcat

Edward W. Dwyer  
HeplerBroom, LLC  
3150 Roland Avenue  
Springfield, IL 62703

As to Respondent PSM

Charles T. Patterson  
Patterson & Prah, LLP  
25043 Little Water Lane  
P.O. Box 767  
Custer, SD 57730-0767

**G. Enforcement and Modification of Stipulation**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. The Complainant, in consultation with the Illinois EPA, and the Respondents may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section V.F. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives to each party of this Stipulation.

**H. Execution of Stipulation**

The undersigned representatives for each party to this Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:   
ANDREW B. ARMSTRONG, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 09/21/2016

FOR THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

ALEC MESSINA, Acting Director  
Illinois Environmental Protection Agency

BY:   
JOHN J. KIM  
Chief Legal Counsel

DATE: 9/19/16

WILDCAT FARMS, LLC

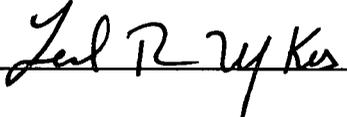
BY: 

Name: BLAKE G. HOLLIS

Title: PRESIDENT

DATE: 8/25/2016

PROFESSIONAL SWINE MANAGEMENT, LLC

BY: 

Name: Ted R Utke

Title: COO - Professional Swine Mgt.

DATE: 8/25/2016



Act ("Act"), 415 ILCS 5/1 *et seq.*, and the Board's regulations, alleged in Count III of the Second Amended Complaint, except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

## I. STATEMENT OF FACTS

### A. Parties to the Stipulation

1. On December 13, 2012, a Second Amended Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31, and Count III is directed against the Respondents.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4.

3. The Respondent High-Power is and was at all times relevant to Count III of the Second Amended Complaint an Illinois limited liability company registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count III, High-Power owned and had ultimate responsibility for a swine farrowing and gestation facility with a design capacity of approximately 6,000 sows, located approximately 4 miles northeast of LaPrairie, in Adams County. The legal description is SE 1/4 of SW 1/4 of Section 12, T2N, R5W, 4<sup>th</sup> P.M., in Adams County ("facility" or "site"). The High-Power site is in the Cedar Creek and LaMoine River watershed.

4. Respondent PSM is and was at all times relevant to Count III of the Second Amended Complaint an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count III, in accordance with an agreement between the Respondents, PSM provided management services to High-Power for the facility.

**B. Allegations of Non-Compliance**

Complainant and the Illinois EPA contend that the Respondents have violated the following provisions of the Act and Board regulations and allege the following facts:

1. On November 10, 2008, swine waste discharged from the High-Power facility due to a break and/or leak in a six-inch diameter PVC pipeline between the High-Power facility's lift station and one of its approximately 3.5 million gallon capacity, above-ground manure storage tanks. During the incident, approximately 90,000 gallons of liquid swine waste were released from the PVC pipeline that was backfilled the week prior to November 10, 2008. The break and/or leak in the PVC pipeline resulted in swine waste seeping out of the ground and then flowing down a grassed waterway, under the township road into an unnamed tributary of the South Branch of Cedar Creek and then into South Branch Cedar Creek and Cedar Creek, causing a fish kill.

2. The High-Power facility houses 6,000 sows weighing more than 55 pounds. Cedar Creek is a water of the United States. In that the discharge caused a fish kill in Cedar Creek, there was a significant nexus between the discharge and biological, chemical and physical impact to a water of the United States.

3. At the time of the discharge on November 10, 2008, neighbors observed discoloration and turbidity in Cedar Creek. They traced the contamination to the facility.

4. At the time of November 10, 2008 discharge to Cedar Creek, Respondents High-Power and PSM did not have a NPDES permit for the High-Power facility, nor had the Respondents applied for one. The discharge from the break in the transfer line at the High-Power facility was a point source discharge.

5. On the basis of the above alleged facts, Count III of the Second Amended Complaint alleges that the above actions and/or omissions caused, threatened or allowed the discharge of contaminants upon the land and into waters of the State so as to alter the physical or

chemical properties of the waters and create or likely create a nuisance and thereby violated Sections 12(a), 12(d) and 12(f) of the Act, 415 ILCS 5/12(a), (d) and (f), and 35 Ill. Adm. Code 302.203 and 35 Ill. Adm. Code 309.102(a).

**C. Non-Admission of Violations**

The Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondents do not affirmatively admit the allegations within Count III of the Second Amended Complaint and referenced within Section I.B herein, or the alleged facts, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

1. Respondents replaced the broken PVC pipeline that resulted in the release of the liquid swine manure. Illinois EPA field staff viewed the repair work on November 12 and 17, 2008.
2. Respondents recovered the released manure. The recovered manure was either land applied or otherwise disposed properly.
3. Respondents made improvements to the freeboard marker systems and, further, implemented barriers and protections as to the PVC clean-out pipe so that equipment operators will readily observe the PVC clean-out pipeline, operate sufficiently distant from it, and will not be in a position to harm it.
4. The pipeline that was the source of the release has been replaced between the manure reception pit and the Slurrystore structures. All construction was overseen by a site superintendent.
5. Routine visual inspection of the livestock waste handling and storage structures are performed.

6. Payment for the fish kill referenced above in Section I.B.2 was made to the Illinois Department of Natural Resources, via Check Number 2317, from High-Power Pork on May 22, 2009, payable to the State of Illinois Fish & Wildlife Fund.

## II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in Count III of the Second Amended Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42.

The Respondents shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondents shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondents under this Stipulation. In the event that the Respondents propose to sell or transfer any real property or operations subject to this Stipulation, the Respondents shall notify the Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondents shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondents site access and all cooperation necessary for Respondents to perform to completion any compliance obligation(s) required by this Stipulation. The Respondents shall provide a copy of this Stipulation to any such successor in interest and the Respondents shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondents and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondents. This provision does not relieve the Respondents from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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

Section 33(c) of the Act, 415 ILCS 5/33( c ) (2014), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;

4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties to this Stipulation state the following:

1. The Respondent released approximately 90,000 gallons of livestock waste to an unnamed tributary of Cedar Creek that reached Cedar Creek causing a fish kill. Analysis of samples taken from the unnamed tributary of South Branch of Cedar Creek indicated 429 mg/L BOD<sub>5</sub>, and 147 mg/L ammonia-N. The environment was threatened by the November 10, 2008 discharge and release of livestock waste.

2. There is social and economic benefit to the facility when it operates in compliance with environmental regulations.

3. Operation of the facility is and was at all times relevant hereto suitable for the area in which it operates.

4. It is technically practicable and economically reasonable for the facility to operate without discharges of livestock waste to the environment.

5. Upon adherence to the terms and conditions of this settlement agreement, Respondents have subsequently complied with the Act and the Board Regulations.

#### **IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties to this Stipulation state as follows:

1. On November 10, 2008, a fish kill in Cedar Creek was discovered, determined to be caused or allowed by Respondents due to the collapse or breakage in a newly installed livestock waste handling system transfer pipe at the High-Power facility. The approximate volume of the unpermitted discharge was 90,000 gallons of swine manure. As of November 11, 2008, as documented in an Illinois EPA field inspection memorandum, the release had been contained and swine manure was not further detected in Cedar Creek or any of its tributaries. A portion of the released manure was recovered and disposed to the livestock waste handling facilities or was land applied.

2. Upon discovering the release, facility employees built earthen dams to contain the swine manure while the swine manure was pumped for proper disposal and clean water was used to aid in waste removal. The Respondents reported the discharge, pursuant to the requirements of 35 Ill. Adm. Code 580, via telephone on November 10, 2008, the same day the release was discovered. On November 17, 2008, the Respondents submitted the required follow-up 5-day

report, albeit two days late. Respondents subsequently repaired the pipeline. Respondents have installed an electronic sounding device to monitor freeboard in the above-ground storage tanks and also conducts visual inspections once a week. Respondents have also implemented measures to protect clean-out pipes from ground equipment operations. Respondents have paid the value of the fish, pursuant to Section 42 (c) of the Act, 415 ILCS 42 (c), and the investigation costs.

3. Respondent did not realize economic benefit in this matter. The release was the result of a poorly installed pipe that failed under the weight of heavy equipment.

4. Complainant contends, based upon the specific facts of this matter, that the assessment of a penalty of Eighteen Thousand Dollars (\$18,000.00), jointly and severally to Respondents, will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent High-Power Pork LLC has no previously adjudicated violations of the Act. Allegation of violation have been asserted against Respondent PSM in Counts I and II and IV through VIII of the Second Amended Complaint. On March 1, 2007, the Board entered an order against Professional Swine Management in the matter of *People v. Pinnacle Genetics, LLC and Professional Swine Management*, PCB 07-29, that required payment of a civil penalty in the amount of \$27,000 and included an order to cease and desist from future violations.

6. The Respondent reported the release, pursuant to the requirements of 35 Ill. Adm. Code 580, at the time it was discovered.

7. The settlement of this matter does not include a supplemental environmental project.

**V. TERMS OF SETTLEMENT**

**A. Penalty Payment**

1. The Respondents shall, jointly and severally, pay a civil penalty in the sum of Eighteen Thousand Dollars (\$18,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

**B. Stipulated Penalties, Interest and Default**

1. If the Respondents fail to complete any activity or fail to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent or Respondents responsible for compliance shall provide notice to the Complainant and the Illinois EPA of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of One Hundred Dollars (\$100.00) per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondents for their noncompliance with this Stipulation. All stipulated penalties shall be payable within thirty (30) calendar days of the date of Complainant's demand.

2. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").

Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name, case number and the Respondents' federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

1. Respondents shall continue to maintain the freeboard marker systems, as well as the barriers and other protections related to equipment operation near the PVC cleanout pipeline. As to Respondent PSM, this requirement shall only be operative when Respondent PSM is under contract with Respondent High-Power to manage or perform these acts.

2. Respondents shall continue to perform routine visual inspections of the livestock waste storage and handling structures. As to Respondent PSM, this requirement shall only be operative when Respondent PSM is under contract with Respondent High-Power to manage or perform these Acts.

3. Respondent High-Power commits that it (i) does not and will not use the same land application areas as any other livestock management facility; (ii) does not and will not transfer dead animals to and from any other livestock management facility; and (iii) does not and will not

share dead animal disposal or handling facilities with any other livestock management facility. Respondent High-Power's Comprehensive Nutrient Management Plan ("CNMP") shall be updated to include the provisions of this paragraph within sixty (60) days from the date the Board adopts and accepts this Stipulation.

4. Respondents shall comply with all applicable requirements in 35 Ill. Admin. Code Sections 502.102 and 502.510(b), and shall ensure that Respondent High-Power's CNMP is updated to comply with the same prior to submittal pursuant to paragraph V.D.5 below of this Stipulation.

5. Within six (6) months from the date the Board adopts and accepts this Stipulation, Respondents shall submit Respondent High-Power's CNMP, as updated to comply with the requirements of paragraphs V.D.3 and V.D.4 above of this Stipulation, to the Illinois EPA and the Attorney General.

6. Respondent High-Power shall notify Illinois EPA in writing within 30 days of the date the Board adopts and accepts this Stipulation that it withdraws its application for NPDES permit coverage, previously submitted on June 11, 2009.

7. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the facility owned and operated by Respondents that is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary, but will observe all protocols established by the facility to ensure safety of the animals and public health, including those protocols restricting entry into the building structures.

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

9. The Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of Count III of the Second Amended Complaint.

**E. Release from Liability**

In consideration of the Respondents' payment of the \$18,000.00 penalty, Respondents' payment of the reasonable cost of the fish kill, Respondents' completion of all activities required hereunder, Respondents' agreement to cease and desist from future violation of the Act and the Board's regulations as stipulated in Section V.D.9, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Count III of the Second Amended Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Second Amended Complaint filed on December 13, 2012. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in

law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondents.

**F. Correspondence, Reports and Other Documents**

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

As to the Complainant

Jane E. McBride  
Assistant Chief  
Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, IL 62706

Michael Roubitchek  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

David Ginder  
Bureau of Water  
Springfield Regional Office  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

As to Respondent High-Power

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

As to Respondent PSM

Charles T. Patterson  
Patterson & Prah, LLP  
25043 Little Water Lane  
P.O. Box 767  
Custer, SD 57730-0767

**G. Enforcement and Modification of Stipulation**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. The Complainant, in consultation with the Illinois EPA, and the Respondents may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section V.F. Any such request shall be made by separate document, and shall not be submitted with any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party to this Stipulation.

**H. Execution of Stipulation**

The undersigned representatives for each party to this Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

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

FOR THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

ALEC MESSINA, Acting Director  
Illinois Environmental Protection Agency

BY:   
JOHN J. KIM  
Chief Legal Counsel

BY:   
ANDREW B. ARMSTRONG, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 9/19/16

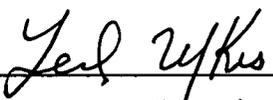
DATE: 09/21/2016

HIGH-POWER PORK, LLC

BY:   
Name: Joseph F. Connor  
Title: \_\_\_\_\_

DATE: 8-19-16

PROFESSIONAL SWINE MANAGEMENT, LLC

BY:   
Name: Ted Utkes  
Title: COO - Professional Swine Mgt.

DATE: 9/2/2016



alleged in Count IV of the Second Amended Complaint, except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

## I. STATEMENT OF FACTS

### A. Parties to the Stipulation

1. On December 13, 2012, a Second Amended Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois. Count IV was brought on the Attorney General's own motion pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e), against the Respondents.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4.

3. Eagle Point is and was at all times relevant to Count IV of the Second Amended Complaint an Illinois limited liability company, registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count IV, Eagle Point owned a swine farrowing and gestation facility with a design capacity of 6,500 sows located at 3001 East Quarter Road, Table Grove, Fulton County, Illinois 61482 (the "site" or "facility"). The legal description is the Southwest quarter of Section 15, T4N, R1E in Vermont Township, Fulton County, Illinois. Drainage from the Eagle Point site flows directly through several ravines into final cut strip mine lakes.

4. PSM is and was at all times relevant to Count IV an Illinois limited liability company registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count IV, in accordance with an agreement between the Respondents, PSM provided management services to Eagle Point for the Eagle Point facility.

### B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondents have violated the

following provisions of the Act and Board regulations and allege the following facts:

1. On May 10, 2007, the Illinois EPA inspected the Eagle Point facility. At the time of the inspection, there was a discharge from the north gestation building perimeter tile onto the land in a manner in which the discharge drained into a strip mine lake. The discharge was slightly cloudy and had a slight livestock waste odor. Analysis of a sample collected from the discharge indicated a fecal coliform level of 35,000 per 100 milliliters ("ml").

2. At the time of the May 10, 2007 inspection, the Illinois EPA inspector sampled a discharge from the Eagle Point facility's private sewage disposal system, that being an aerated septic tank that serves the office restrooms and showers. This system discharges through a 4-inch diameter line into a lake located east of the Eagle Point facility structures. At the time of the inspection, the discharge was slightly turbid and had a septic odor. The sample analysis results indicated a fecal coliform level of 56,000 per 100 ml, and ammonia level of 41.8 milligrams per liter ("mg/l"), and a biochemical oxygen demand level of 48 mg/l. The septic tank discharge was through a pipe into a lake.

3. The strip mine lake that was the receiving water of the discharges is tributary to Otter Creek, a perennial stream that flows into the Illinois River.

4. Count IV of the Second Amended Complaint alleges that the above actions and/or omissions caused, threatened or allowed the discharge of contaminants upon the land and into waters of the State so as to alter the physical or chemical properties of the waters and create or likely cause a nuisance and thereby violated Section 12(a), 12(d) and 12(f) of the Act, 415 ILCS 5/12(a), (d), (f), and 35 Ill. Admin. Code 309.102(a).

**C. Non-Admission of Violations**

The Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondents do not

affirmatively admit the allegations of violation within Count IV of the Second Amended Complaint and referenced within Section I.B herein, or the alleged facts, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

1. Eagle Point retained Frank & West Environmental Engineers to review the Eagle Point facility's perimeter tile data based on the Complainant's and Illinois EPA's concerns.

2. Respondents, as set forth in Section V.D herein, have agreed to disconnect the discharge portion of the Eagle Point facility's perimeter tile lines and install sump pumps that will pump any tile discharges back into the building waste storage pits, which will prevent discharges from the Eagle Point facility's perimeter tile lines. Eagle Point has confirmed that its perimeter tile pumping system will be designed and installed such that the tile pumping system outlet into the building pits does not have access to any manure levels, thus effectively eliminating the possibility of manure entering the tile pumping system lift station via the outlet piping.

3. Respondents retained Maguire Backhoe Company to assess the soils at the Eagle Point site and the structural configuration of the Eagle Point facility in order to determine the feasibility of installing a non-surface-discharging septic system at the Eagle Point site.

4. Respondents, as set forth below in Section V.D of this Stipulation have agreed to install a non-surface-discharging septic system at the Eagle Point site, which will eliminate septic system surface discharges from the Eagle Point facility.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents shall not raise as a

defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board regulations for all violations alleged in Count IV of the Second Amended Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42.

The Respondents shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondents shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondents under this Stipulation. In the event that the Respondents propose to sell or transfer any real property or operations subject to this Stipulation, the Respondents shall notify the Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondents shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondents site access and all cooperation necessary for Respondents to perform to completion any compliance obligation(s) required by this Stipulation. The Respondents shall provide a copy of this Stipulation to any such successor in interest and the Respondents shall continue to be bound by and remain liable for performance

of all obligations under this Stipulation. In appropriate circumstances, however, the Respondents and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondents. This provision does not relieve the Respondents from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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

Section 33(c) of the Act, 415 ILCS 5/33( c ) (2014), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties to this Stipulation state the following:

1. The environment was threatened by the May 10, 2007 north gestation building perimeter tile discharge.
2. There is social and economic benefit to the Eagle Point facility when it operates in compliance with environmental regulations.
3. Operation of the Eagle Point facility is suitable for the area in which it is located.

4. It is technically practicable and economically reasonable for the Eagle Point facility to operate without discharges of wastewater to the environment.

5. Upon adherence to the terms and conditions of this settlement agreement, Respondents have subsequently complied with the Act and the Board regulations.

#### IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties to this Stipulation state as follow:

1. On May 10, 2007, there was a discharge from the Eagle Point facility's north gestation building perimeter tile onto the land in a manner in which the discharge drained into a

strip mine lake. The discharge was slightly cloudy and had a slight livestock waste odor. Analysis of a sample collected from the discharge indicates a fecal coliform level of 35,000 per 100 milliliters ("ml").

2. As set forth below in Section V.D of this Stipulation, to eliminate the source of the May 10, 2007, discharge, the Respondents will disconnect the discharge portion of the tile lines and install sump pumps that will direct any perimeter tile flow back into the building pits. Complainant contends that conditions that resulted in the discharge will remain at the facility until Respondents comply with Section V.D. herein.

3. The Fulton County Health Department authorized the Eagle Point facility's septic system discharge prior to the effective date of the United States Environmental Protection Agency Region 5's NPDES General Permit for New and Replacement Surface Discharging Wastewater Treatment Systems (NPDES Permit No. ILG62) ("General Permit"), the septic system was installed and operational before the General Permit's effective date, and the Illinois EPA acknowledged the Fulton County Health Department's authorization of the septic system in Illinois EPA's May 25, 2011, inspection report, which was issued subsequent to the Complainant's filing of the original complaint in this matter. Regardless, the Illinois EPA alleges that the Respondents must either eliminate all surface discharges from its existing septic system, or obtain additional authorization for the continued utilization of its existing septic system by applying to the Illinois EPA for an individual NPDES permit for the septic system discharge.

4. As set forth below in Section V.D of this Stipulation, and despite the authorizations of the existing septic system discharge set forth above in Section IV.3, the Respondents have agreed to respond to the Illinois EPA's allegation by installing a non-surface discharging septic system at the Eagle Point site.

5. Due to the minimal cost involved with disconnecting the discharge portion of the subject perimeter tile, and installing pumps to direct the tile flow into the building pits, the economic benefit of delay in compliance is nominal.

6. Complainant contends, based upon the specific facts of this matter, that the assessment of a penalty of Sixteen Thousand Dollars (\$16,000.00), jointly and severally to Respondents will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

7. Respondent Eagle Point has no previously adjudicated violations of the Act. Allegations of violation have been asserted against Respondent Professional Swine Management in Counts I through III and V through VII of the Second Amended Complaint. On March 1, 2007, the Board entered an order against Professional Swine Management in the matter of *People v. Pinnacle Genetics, LLC and Professional Swine Management*, PCB 07-29, that required payment of a civil penalty in the amount of \$27,000 and included an order to cease and desist from future violations.

8. The Respondents did not self-report the perimeter tile flow discharge, as required pursuant to 35 Ill. Adm. Code 580, at the time it was discovered.

9. The settlement of this matter does not include a supplemental environmental project.

#### **V. TERMS OF SETTLEMENT**

##### **A. Penalty Payment**

1. The Respondents shall, jointly and severally, pay a civil penalty in the sum of Sixteen Thousand Dollars (\$16,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

**B. Stipulated Penalties, Interest and Default**

1. If the Respondents fail to complete the requirements of Sections V.D.1, V.D.3, or V.D.6 by the dates specified in those sections, the Respondents shall provide notice to the Complainant and the Illinois EPA of each failure to comply with those sections and shall pay stipulated penalties in the amount of One Hundred Dollars (\$100.00) per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondents for their noncompliance with those sections. All stipulated penalties shall be payable within thirty (30) calendar days of the date of Complainant's demand.

2. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name, case number and the Respondents' federal tax identification numbers shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, IL 62706

**D. Future Compliance**

1. Within 120 days of entry of the Board's Order accepting this Stipulation, Respondents shall disconnect the discharge portion of the perimeter tile lines and install and have operational sump pumps that will pump any tile discharges back into the building waste storage pits, except that this deadline may be extended to reasonably accommodate any delays due to weather conditions that prevent or stall the disconnection of the discharge portion of the perimeter tile lines and the installation/operation of the sump pumps within the 120 days allowed. As to Respondent PSM, the requirements of this paragraph shall only be operative when Respondent PSM is coordinating the installation and/or operation of these sump pump systems pursuant to a contract with Respondent Eagle Point.

2. The Respondents reserve the right to request authorization from the Illinois Department of Agriculture to close the building perimeter tiles. Elimination of the perimeter drainage tile requires that Respondents make an engineering based demonstration to the Illinois Department of Agriculture that the subject tile is no longer required to meet the Illinois Livestock Management Facilities Act design standards.

3. Respondents agree to install a non-surface-discharging septic system at the Eagle Point site, which will eliminate septic system surface discharges from the Eagle Point facility. This non-surface-discharging septic system shall be installed and operating within 120 days from the date the Board adopts and accepts this Stipulation, except that this deadline may be extended to reasonably accommodate any delays due to weather conditions that prevent or

stall the installation of the non-surface-discharging septic system within the 120 days allowed.

As to Respondent PSM, the requirements of this paragraph shall only be operative when

Respondent PSM is coordinating the installation and/or operation of this non-surface-

discharging septic system pursuant to a contract with Respondent Eagle Point.

4. Respondent Eagle Point commits that it (i) does not and will not use the same land application areas as any other livestock management facility; (ii) does not and will not transfer dead animals to and from any other livestock management facility; and (iii) does not and will not share dead animal disposal or handling facilities with any other livestock management facility. Respondent Eagle Point's Comprehensive Nutrient Management Plan ("CNMP") shall be updated to include the provisions of this paragraph within sixty (60) days from the date the Board adopts and accepts this Stipulation.

5. Respondents shall comply with all applicable requirements in 35 Ill. Adm. Code Sections 502.102 and 502.510(b), and shall ensure that Respondent Eagle Point's CNMP is updated to comply with the same prior to submittal pursuant to paragraph V.D.6 below of this Stipulation.

6. Within six (6) months from the date the Board adopts a Final Order accepting this Stipulation, Respondents shall submit Respondent Eagle Point's CNMP, as updated to comply with the requirements of paragraphs V.D.4 and V.D.5 above of this Stipulation, to the Illinois EPA and the Attorney General.

7. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Eagle Point facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and

collect information, as they deem necessary, but will observe all protocols established by the facility to ensure safety of the animals and public health, including those protocols restricting entry into the building structures.

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

9. Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of Count IV of the Second Amended Complaint.

**E. Release from Liability**

In consideration of the Respondents' payment of the \$16,000.00 penalty, Respondents' adherence to all compliance commitments required hereunder and completion of all activities required hereunder, Respondents' agreement to cease and desist from future violation of the Act and the Board's regulations as stipulated in Section V.D.9, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of Count IV of the Second Amended Complaint filed herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Count IV of the Second Amended Complaint filed on December 13, 2012. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and

d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

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

**F. Correspondence, Reports and Other Documents**

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

As to the Complainant

Jane E. McBride  
Assistant Chief  
Environmental Bureau, South  
500 South Second Street  
Springfield, IL 62706

Michael Roubitchek  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

Eric Ackerman  
Bureau of Water  
Peoria Regional Office  
412 S.W. Washington St., Suite D  
Peoria, IL 61602

As to Respondent Eagle Point

Edward W. Dwyer  
HeplerBroom, LLC  
3150 Roland Avenue  
Springfield, IL 62703

As to Respondent PSM

Charles T. Patterson  
Patterson & Prah, LLP  
25043 Little Water Lane  
P.O. Box 767  
Custer, SD 57730-0767

**G. Enforcement and Modification of Stipulation**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. The Complainant, in consultation with the Illinois EPA, and the Respondents may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section V.F. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party to this Stipulation.

**H. Execution of Stipulation**

The undersigned representatives for each party to this Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

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

FOR THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

ALEC MESSINA, Acting Director  
Illinois Environmental Protection Agency

BY: *Andrew Armstrong*  
ANDREW B. ARMSTRONG, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 09/21/2016

BY: *[Signature]*  
JOHN J. KIM  
Chief Legal Counsel

DATE: 9/19/16

EAGLE POINT FARMS, LLC

BY: *Eagle Point Farms*  
*By Joel Huber*  
Name: *Joel Huber*  
Title: *President*

DATE: 9/8/2016

PROFESSIONAL SWINE MANAGEMENT, LLC

BY: *Ted R. Utke*  
Name: *Ted R. Utke*  
Title: *COO - Professional Swine Mgt.*

DATE: 9/7/2016



Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.*, and the Board's regulations, alleged in Count V of the Second Amended Complaint, except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

## I. STATEMENT OF FACTS

### A. Parties to the Stipulation

1. On December 13, 2012, a Second Amended Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois. Count V was brought on the Attorney General's own motion pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e), against the Respondents.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4.

3. Respondent Lone Hollow is and was at all times relevant to Count V of the Second Amended Complaint an Illinois limited liability company, registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count V, Respondent Lone Hollow owned a farrow to wean swine operation facility located at 539 N. County Road 2600, Bowen, IL. The legal description for this facility is in the SW 1/4, Section 5 and SE 1/4, Section 6, T3N, R5W, (Augusta Township) in Hancock County (the "site" or "facility"). There are a total of 5,650 swine greater than 55 pounds maintained at the facility. The Lone Hollow facility is located within the watershed of Panther Creek which is tributary to Bronson Creek which is tributary to the LaMoine River.

4. Respondent PSM is and was at all times relevant to Count V, an Illinois limited liability company, registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count V, in accordance with an agreement between the Respondents, PSM provided management services to Lone Hollow for the facility.

**B. Allegations of Non-Compliance**

Complainant and the Illinois EPA contend that the Respondents have violated the following provisions of the Act and Board regulations and allege the following facts:

1. The facility consists of five total confinement buildings that house swine. Waste is stored in pits under the buildings.

2. A 10-bay compost structure for swine mortality is located on the south side of the site. At the time of a September 25, 2007 Illinois EPA inspection, leachate was discharging from the compost material on the north side of the uncovered compost structure.

3. On September 13, 2007, a swine manure release occurred at the Lone Hollow facility. On that date, in an attempt to unplug a pit drainage pipe, liquid was being added to the pit of the farrowing building. The main farrowing building is equipped with an 8-inch diameter pit access/pump out pipe at the southeast corner of the building. The level of wastewater built up within the shallow pit beneath the farrowing building until it reached an outlet at the 8-inch diameter pipe. Liquid swine manure drained out of the 8-inch pipe at the southeast corner of the farrowing building and flowed southeast across the gravel drive. The manure continued to flow east until it reached the waterway to the east of the swine confinement buildings.

4. Upon discovering the release, facility employees stopped the flow at the point where it had reached the waterway using compost from the mortality area. An earthen dam was also constructed immediately east (downstream) from the release flow. An Illinois EPA inspector advised the facility to recover the released wastewater and compost material from the drainage channel/waterway and apply it to cropland as soon as possible.

5. The September 13, 2007 discharge was to a waterway east of the swine confinement buildings.

6. On September 25, 2007, at the time of a follow-up inspection, the Illinois EPA inspector collected samples at four locations at the facility. A sample was collected from the

wastewater release from the manure pit. The sample was taken from a waterway/drainage channel about 150 yards east of the confinement buildings. The liquid was turbid, light brown in color and odorous. Analytical results of this sample indicate an ammonia level of 54.8 milligrams per liter ("mg/l"); biological oxygen demand of 780 mg/l; total suspended solids of 1130 mg/l and fecal coliform of 5,900,000 per 100 ml. Another sample was taken from a second location at the waterway/drainage channel that received the waste release, 150 yards east of the confinement buildings. The liquid was turbid, light brown in color and odorous. Analytical results of this sample indicate an ammonia level of 934 milligrams per liter ("mg/l"); biological oxygen demand of 8100 mg/l; total suspended solids of 2130 mg/l and fecal coliform of 5,700,000 per 100 ml.

7. At the time of the September 25, 2007 inspection, the Illinois EPA inspector also took samples of discharges that were occurring from building perimeter tiles. A very low flow of clear liquid was discharging from the perimeter tile for the isolation confinement building. The tile outlet is located about 50 yards north of the isolation building. Analytical results of this sample indicate fecal coliform of 5,400 per 100 ml. A second perimeter tile sample was taken from a perimeter tile serving the facility's gestation building #1. The tile outlet is located north of gestation building #1. Analytical results of this sample indicate fecal coliform of 11,700 per 100 ml.

8. The waterways at Lone Hollow drain to an unnamed tributary of Panther Creek. The unnamed tributary is identified as an intermittent creek on the USGS topographical map. Panther Creek is a perennial stream. Panther Creek is tributary to Bronson Creek which is tributary to the LaMoine River. The September 2007 discharges at Lone Hollow, described above, were discharges to waters of the United States.

9. At the time of September 13, 2007 discharge to the waterway tributary to Panther Creek and the September 25, 2007 perimeter tile discharge, Respondents Lone Hollow and

PSM did not have a NPDES permit for the Lone Hollow facility, nor had the Respondents applied for one. The discharges from the confinement building pit, and from the perimeter tiles at the Lone Hollow facility are point source discharges.

10. Based upon the above alleged facts, Count V of the Second Amended Complaint alleges that the above actions and/or omissions caused, threatened or allowed the discharge of contaminants upon the land into waters of the State so as to alter the physical or chemical properties of the waters and create or likely create a nuisance and thereby violated Sections 12(a), 12(d) and 12(f) of the Act, 415 ILCS 5/12(a), (d) and (f), and 35 Ill. Adm. Code 309.102(a).

**C. Non-Admission of Violations**

The Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondents do not affirmatively admit the allegations of violation within Count V of the Second Amended Complaint and referenced within Section I.B herein, or the alleged facts, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

1. Upon discovering the release from the pit access/pump out pipe, facility employees stopped the flow at the point where it had reached the waterway using compost from the mortality area. An earthen dam was also constructed downstream of the release flow. An Illinois EPA inspector advised the facility to recover the released wastewater and compost material from the drainage channel/waterway and apply it to cropland as soon as possible.

2. Respondents have modified the facility compost structure. It is now roofed. Other improvements have been completed that control and contain leachate.

3. On August 15, 2011, the Illinois EPA conducted a compliance inspection at the Lone Hollow facility. At the time of the inspection, the inspectors observed that Respondents had installed an extended manure cleanout pipe with an elevated top to prevent overflows. The clean out pipe also facilitates mechanical cleanout of the below ground manure piping that may prevent plugging of the pipe and discharge from the manure pit pump output.

4. Regarding alleged perimeter tile discharges, Respondent Lone Hollow has agreed to install lift stations at the gilt developer building and at gestation building #1 to eliminate any potential for perimeter tile discharge by directing the liquid back to the facility's waste storage structures. Such installation shall occur within 60 days of the Board Order accepting this Stipulation and Proposal for Settlement.

## II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in Count V of the Second Amended Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42.

The Respondents shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and

shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondents shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondents under this Stipulation. In the event that the Respondents propose to sell or transfer any real property or operations subject to this Stipulation, the Respondents shall notify the Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondents shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondents site access and all cooperation necessary for Respondents to perform to completion any compliance obligation(s) required by this Stipulation. The Respondents shall provide a copy of this Stipulation to any such successor in interest and the Respondents shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondents and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondents. This provision does not relieve the Respondents from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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

Section 33(c) of the Act, 415 ILCS 5/33( c ) (2014), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the

emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties to this Stipulation state the following:

1. The environment was threatened by the discharge and release of livestock waste from the facility. Analysis of sample results indicated ammonia, biochemical oxygen demand and total suspended solids in exceedance of water quality standards.
2. There is social and economic benefit when the facility operates in compliance with environmental regulations.
3. Operation of the facility is and was at all times relevant hereto suitable for the area in which it operates.
4. It is technically practicable and economically reasonable for this facility to operate without discharges of livestock waste to the environment.
5. Upon adherence to the terms and conditions of this settlement agreement, Respondents have subsequently complied with the Act and the Board Regulations.

#### **IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties to this Stipulation state as follows:

1. On September 13, 2007, liquid swine manure drained out of the 8-inch pipe at the southeast corner of the Lone Hollow facility's farrowing building and flowed southeast across the gravel drive. The manure continued to flow east until it reached the waterway to the east of the swine confinement buildings. At the time of the September 25, 2007 inspection, a sample was collected from the wastewater release from the manure pit. The sample was taken from a waterway/drainage channel about 150 yards east of the confinement buildings. The liquid was turbid, light brown in color and odorous. Analytical results of this sample indicate an ammonia level of 54.8 milligrams per liter ("mg/l"); biological oxygen demand of 780 mg/l; total suspended solids of 1130 mg/l and fecal coliform of 5,900,000 per 100 ml. Another sample was taken from a second location at the waterway/drainage channel that received the waste release, 150 yards

east of the confinement buildings. The liquid was turbid, light brown in color and odorous. Analytical results of this sample indicate an ammonia level of 934 milligrams per liter ("mg/l"); biological oxygen demand of 8100 mg/l; total suspended solids of 2130 mg/l and fecal coliform of 5,700,000 per 100 ml.

At the time of the September 25, 2007 inspection, leachate was discharging from the north side of the facility's uncovered compost structure.

At the time of the September 25, 2007 inspection, the Illinois EPA inspector took samples of discharges that were occurring from building perimeter tiles. A very low flow of clear liquid was discharging from the perimeter tile for the isolation confinement building. The tile outlet is located about 50 yards north of the isolation building. Analytical results of this sample indicate fecal coliform of 5,400 per 100 ml. A second perimeter tile sample was taken from a perimeter tile serving the facility's gestation building #1. The tile outlet is located north of gestation building #1.

2. Respondents stopped the flow at the point where wastewater had reached the waterway using compost from the mortality area. An earthen dam was also immediately constructed downstream from the release flow. As of the September 25, 2007 inspection, Respondents had collected and disposed of the compost material used to contain the release and land applied the released liquid swine material.

3. Complainant contends that the release resulted in economic benefit, albeit nominal, since Respondents would have reduced the risk of a release if they had originally installed extended manure cleanout pipes with elevated tops to prevent overflows, and mechanical cleanout capability for the below ground manure piping to prevent plugging. Respondents would have reduced the risk of discharges if they had taken steps to roof and otherwise improve the facility compost structure earlier.

4. Complainant contends, based upon the specific facts of this matter that the assessment of a penalty of Seventeen Thousand Five Hundred Dollars (\$17,500.00), jointly and severally to Respondents, will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent Lone Hollow, LLC has no previously adjudicated violations of the Act. Allegations of violation have been asserted against Respondent Professional Swine Management in Counts I through IV and VI through VIII of the Second Amended Complaint. On March 1, 2007, the Board entered an order against Professional Swine Management in the matter of *People v. Pinnacle Genetics, LLC and Professional Swine Management*, PCB 07-29, that required payment of a civil penalty in the amount of \$27,000 and included an order to cease and desist from future violations.

6. The Respondent reported the manure pit release, pursuant to the requirements of 35 Ill. Adm. Code 580, at the time it was discovered on September 13, 2007.

7. The settlement of this matter does not include a supplemental environmental project.

## V. TERMS OF SETTLEMENT

### A. Penalty Payment

1. Respondents shall, jointly and severally, pay a civil penalty in the sum of Seventeen Thousand Five Hundred Dollars (\$17,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

### B. Stipulated Penalties, Interest and Default

1. If the Respondents fail to complete any activity or fail to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent or Respondents responsible for compliance shall provide notice to the Complainant and the Illinois

EPA of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of One Hundred Dollars (\$100.00) per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondents for their noncompliance with this Stipulation. All stipulated penalties shall be payable within thirty (30) calendar days of the date of Complainant's demand.

2. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name, case number and the Respondents' federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

1. Within 120 days of entry of the Board's Order accepting this Stipulation, Respondents shall disconnect the discharge portion of the perimeter tile lines and install and have operational sump pumps that will pump any tile discharges back into the building waste storage pits at the gilt development building and at gestation building #1, except that this deadline may be extended to reasonably accommodate any delays due to weather conditions that prevent or stall the disconnection of the discharge portion of the perimeter tile lines and the installation/operation of the sump pumps within the 120 days allowed. As to Respondent PSM, the requirements of this paragraph shall only be operative when Respondent PSM is coordinating the installation and/or operation of these sump pump systems pursuant to a contract with Respondent Lone Hollow.

2. Respondent Lone Hollow commits that it (i) does not and will not use the same land application areas as any other livestock management facility; (ii) does not and will not transfer dead animals to and from any other livestock management facility; and (iii) does not and will not share dead animal disposal or handling facilities with any other livestock management facility. Respondent Lone Hollow's Comprehensive Nutrient Management Plan ("CNMP") shall be updated to include the provisions of this paragraph within sixty (60) days from the date the Board adopts and accepts this Stipulation.

3. Respondents shall comply with all applicable requirements in 35 Ill. Adm. Code Sections 502.102 and 502.510(b), and shall ensure that Respondent Lone Hollow's CNMP is updated to comply with the same prior to submittal pursuant to paragraph V.D.4 below of this Stipulation.

4. Within six (6) months from the date the Board adopts and accepts this Stipulation, Respondents shall submit Respondent Lone Hollow's CNMP, as updated to comply with the requirements of paragraphs V.D.2 and V.D.3 above of this Stipulation, to the Illinois EPA and the Attorney General.

5 In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the facility owned and operated by Respondents that is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary, but will observe all protocols established by the facility to ensure safety of the animals and public health, including those protocols restricting entry into the building structures.

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

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

**E. Release from Liability**

In consideration of the Respondents' payment of the \$17,500.00 penalty, Respondents' completion of all activities required hereunder, Respondents' agreement to cease and desist from future violation of the Act and the Board's regulations as stipulated in Section V.D.7, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of Count V of the Second Amended Complaint herein.

The release set forth above does not extend to any matters other than those expressly specified in Complainant's Second Amended Complaint filed on December 13, 2012. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

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

**F. Correspondence, Reports and Other Documents**

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

As to the Complainant

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

Michael Roubitchek  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
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Eric Ackerman  
Bureau of Water  
Peoria Regional Office  
412 S.W. Washington St., Suite D  
Peoria, IL 61602

As to Respondent Lone Hollow

Claire A. Manning  
Brown Hay & Stephens, LLP  
205 S. Fifth Street  
PO Box 2459  
Springfield, IL 62705

As to Respondent PSM

Charles T. Patterson  
Patterson & Prah, LLP  
25043 Little Water Lane  
PO Box 767  
Custer, SD 57730-0767

**G. Enforcement and Modification of Stipulation**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. The Complainant, in consultation with the Illinois EPA, and the Respondents may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section V.F. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party to this Stipulation.

**H. Execution of Stipulation**

The undersigned representatives for each party to this Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

PEOPLE OF THE STATE OF ILLINOIS,

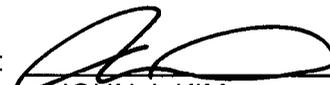
MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

BY:   
ANDREW B. ARMSTRONG, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 09/21/2016

FOR THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

ALEC MESSINA, Acting Director  
Illinois Environmental Protection Agency

BY:   
JOHN J. KIM  
Chief Legal Counsel

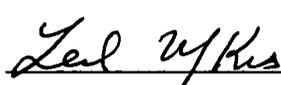
DATE: 09/19/16

LONE HOLLOW, LLC

BY:   
Name: Joseph F Cannon  
Title: \_\_\_\_\_

DATE: 8-19-16

PROFESSIONAL SWINE MANAGEMENT, LLC

BY:   
Name: Ted Utkes  
Title: COO - Professional Swine Mgt

DATE: 9/2/2016



alleged in Count VI of the Second Amended Complaint, except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

## I. STATEMENT OF FACTS

### A. Parties to the Stipulation

1. On December 13, 2012, a Second Amended Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois. Count VI was brought on the Attorney General's own motion pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e), against the Respondents.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4.

3. Timberline is and was at all times relevant to Count VI of the Second Amended Complaint an Illinois limited liability company, registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count VI, Timberline owned a swine farrowing and gestation facility with a design capacity of 3,000 sows located at 1700 East 1900 North, Rushville, Schuyler County, Illinois 62681 (the "facility" or "site"). The legal description is Section 12 of Township 3-North, Range 2-West, 4<sup>th</sup> Prin. Meridian, Schuyler County, Illinois. The Timberline facility is located within the watershed of West Branch Sugar Creek.

4. PSM is and was at all times relevant to Count VI an Illinois limited liability company registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count VI, in accordance with an agreement between the Respondents, PSM provided management services to Timberline for the Timberline facility.

### B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondents have violated the following provisions of the Act and Board regulations and allege the following facts:

1. On September 11, 2008, the Illinois EPA conducted an inspection of the Timberline facility. At the time of the inspection, leachate was discharging from the facility's dead animal composting structure. The purple colored leachate exited the unroofed composting structure and entered a dry dam that has a surface connection to an unnamed tributary of the West Branch of Sugar Creek.

2. At the point at which the unnamed tributary entered the West Branch of Sugar Creek, the West Branch of Sugar Creek is identified as an intermittent stream on the USGS topographical map. Within approximately 4 miles downstream, the West Branch of Sugar Creek is identified as a perennial creek on the USGS topographic map, that is, flow is maintained throughout the year. The dry dam and tributary to the West Branch of Sugar Creek are a surface hydrological connection to waters of the United States, and, as such, the subject discharge was a discharge to waters of the United States.

3. The facility's environmental specialist was on site at the time of the September 11, 2008 inspection. She provided the following information. The discharge of leachate from the composting structure occurred during recent heavy rainfalls. Facility personnel had attempted to build small gravel dams to prevent the leachate from entering the dry dam. As the rain continued, the dams were not adequate to contain the leachate exiting the composting structure.

4. Count VI of the Second Amended Complaint alleges that the above actions and/or omissions caused, threatened or allowed the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution and/or a water pollution hazard and thereby violated Sections 12(a) and 12(d) of the Act, 415 ILCS 5/12(a), (d), and 35 Ill. Adm. Code 501.403(a).

5. At the time of September 11, 2008 discharge to the water tributary to West Branch Sugar Creek, Respondents Timberline and PSM did not have a National Pollution Discharge Elimination System ("NPDES") permit for the Timberline facility, nor had the

Respondents Timberline and PSM applied for one. The discharges from the compost structure at the Timberline facility was a point source discharge.

6. By causing or allowing the discharge of livestock wastewater to waters of the State without an NPDES permit, Respondents Timberline and PSM violated 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

**C. Non-Admission of Violations**

The Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondents do not affirmatively admit the allegations of violation within Count VI of the Second Amended Complaint and referenced within Section I.B herein, or the alleged facts, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

1. At the time of the September 11, 2008 inspection, the Respondents had applied to the Natural Resources Conservation Service ("NRCS") for Environmental Quality Incentives Program ("EQIP") funding to place a roof over the composting structure at the Timberline facility.

2. The compost unit at the Timberline facility was modified and upgraded in 2009 such that all liquids from the compost are contained. A concrete floor was installed underneath the composting structure and the work area in front of the composted bays. The area closest to the compost bays was reconstructed so that it slopes slightly toward the bays. A roof with guttering was installed over the composting structure, which helps to maintain appropriate compost moisture content and prevent precipitation from coming into contact with the composting material. In 2014, the work area in front of the bay was expanded, enclosed and covered.

## II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board regulations for all violations alleged in Count VI of the Second Amended Complaint, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42.

The Respondents shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondents shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondents under this Stipulation. In the event that the Respondents propose to sell or transfer any real property or operations subject to this Stipulation, the Respondents shall notify the Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondents shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondents site access and all cooperation necessary

for Respondents to perform to completion any compliance obligation(s) required by this Stipulation. The Respondents shall provide a copy of this Stipulation to any such successor in interest and the Respondents shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondents and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondents. This provision does not relieve the Respondents from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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

Section 33(c) of the Act, 415 ILCS 5/33( c )(2014), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties to this Stipulation state the following:

1. The environment was threatened by the discharge of leachate from the Timberline facility's composting structure during periods of heavy rainfall.

2. There is social and economic benefit to the Timberline facility when it operates in compliance with environmental regulations.
3. Operation of the Timberline facility is suitable for the area in which it is located.
4. It is technically practicable and economically reasonable for the Timberline facility to operate without discharges of leachate from its composting structure to the environment.
5. Upon adherence to the terms and conditions of this settlement agreement, Respondents have subsequently complied with the Act and the Board regulations.

#### IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties to this Stipulation state as follows:

1. The discharge of leachate from the facility's composting structure occurred during recent heavy rainfalls. Facility personnel attempted to build small gravel dams to prevent the leachate from entering the dry dam. As the rains continued, the dams were not adequate to contain the leachate exiting the composting structure. The discharging leachate exited the unroofed composting structure and entered a dry dam that has a surface connection to an unnamed tributary of the West Branch of Sugar Creek. Complainant contends that these conditions continued to exist until the compost structure was modified in 2009.

2. The risk of a composting structure discharge would have been reduced if the existing composting structure modifications had been constructed at an earlier date.

3. Complainant contends, based upon the specific facts of this matter, that the assessment of a penalty of Eleven Thousand Dollars (\$11,000.00), jointly and severally to Respondents will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

4. Respondent Timberline has no previously adjudicated violations of the Act. Allegations of violation have been asserted against Respondent Professional Swine Management in Counts I through V and VII and VIII of the Second Amended Complaint. On March 1, 2007, the Board entered an order against Professional Swine Management in the matter of *People v. Pinnacle Genetics, LLC and Professional Swine Management*, PCB 07-29, that required payment of a civil penalty in the amount of \$27,000 and included an order to cease and desist from future violations.

5. The Respondents did not self-report the subject discharge of leachate from the facility compost structure, as required pursuant to 35 Ill. Adm. Code 580, at the time it was discovered.

6. The settlement of this matter does not include a supplemental environmental project.

## V. TERMS OF SETTLEMENT

### A. Penalty Payment

1. The Respondents shall, jointly and severally, pay a civil penalty in the sum of Eleven Thousand Dollars (\$11,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

### B. Stipulated Penalties, Interest and Default

1. If the Respondents fail to complete the requirements of Section V.D.4 of this Stipulation by the date specified in that section, the Respondents shall provide notice to the Complainant and the Illinois EPA of each failure to comply with that section and shall pay stipulated penalties in the amount of One Hundred Dollars (\$100.00) per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondents for their noncompliance with that section. All stipulated penalties shall be payable within thirty (30) calendar days of the date of Complainant's demand.

2. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name, case number and the Respondents' federal tax identification numbers shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

1. Respondents shall continue to maintain the integrity of the composting structure, including the roof, such that precipitation and surface water is diverted away from the composting materials within the composting structure. Respondents shall conduct periodic inspections of the composting structure. As to Respondent PSM, the requirements of this paragraph shall only be operative when Respondent PSM is coordinating composting pursuant to a contract with Respondent Timberline.

2. Respondent Timberline commits that it (i) does not and will not use the same land application areas as any other livestock management facility; (ii) does not and will not transfer dead animals to and from any other livestock management facility; and (iii) does not and will not share dead animal disposal or handling facilities with any other livestock

management facility. Respondent Timberline's Comprehensive Nutrient Management Plan ("CNMP") shall be updated to include the provisions of this paragraph within sixty (60) days from the date the Board adopts and accepts this Stipulation.

3. Respondents shall comply with all applicable requirements in 35 Ill. Admin. Code Sections 502.102 and 502.510(b), and shall ensure that Respondent Timberline's CNMP is updated to comply with the same prior to submittal pursuant to paragraph V.D.4 below of this Stipulation.

4. Within six (6) months from the date the Board adopts and accepts this Stipulation, Respondents shall submit Respondent Timberline's CNMP, as updated to comply with the requirements of paragraphs V.D.2 and V.D.3 above of this Stipulation, to the Illinois EPA and the Attorney General.

5. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Timberline facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary, but will observe all protocols established by the facility to ensure safety of the animals and public health, including those protocols restricting entry into the building structures.

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

7. Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of Count VI of the Second Amended Complaint.

**E. Release from Liability**

In consideration of the Respondents' payment of the \$11,000.00 penalty, Respondents' completion of all activities required hereunder, Respondents' agreement to cease and desist from future violation of the Act and the Board's regulations as stipulated in Section V.D.7, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of Count VI of the Second Amended Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Second Amended Complaint filed on December 13, 2012. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

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

**F. Correspondence, Reports and Other Documents**

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

As to the Complainant

Jane E. McBride  
Assistant Chief  
Environmental Bureau  
500 South Second Street  
Springfield, IL 62706

Michael Roubitchek  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

David Ginder  
Bureau of Water  
Springfield Regional Office  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

As to Respondent Timberline

Edward W. Dwyer  
HeplerBroom, LLC  
3150 Roland Avenue  
Springfield, IL 62703

As to Respondent PSM

Charles T. Patterson  
Patterson & Prah, LLP  
25043 Little Water Lane  
P.O. Box 767  
Custer, SD 57730-0767

**G. Enforcement and Modification of Stipulation**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. The Complainant, in consultation with the Illinois EPA, and the Respondents may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the

contact persons identified in Section V.F. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party to this Stipulation.

**H. Execution of Stipulation**

The undersigned representatives for each party to this Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY: Andrew Armstrong  
ANDREW B. ARMSTRONG, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 09/21/2016

TIMBERLINE, LLC

BY: Gary L. Martin

Name: Gary L. Martin

Title: President

PROFESSIONAL SWINE MANAGEMENT, LLC

BY: Ted R. Uttles

Name: Ted R. Uttles

Title: COO - Professional Swine Mgt.

FOR THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

ALEC MESSINA, Acting Director  
Illinois Environmental Protection Agency

BY: [Signature]  
JOHN J. KIM  
Chief Legal Counsel

DATE: 9/19/16

DATE: 9/7/2016

DATE: 9/7/2016



the Second Amended Complaint, except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

## I. STATEMENT OF FACTS

### A. Parties to the Stipulation

1. On December 13, 2012, a Second Amended Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois. Count VII was brought on the Attorney General's own motion pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e), against the Respondents.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4.

3. Respondent Prairie State is and was at all times relevant to Count VII of the Second Amended Complaint an Illinois corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count VII, Prairie State owned the sow breeding and gestation facility located in the Northeast quarter of Section 11 and Northwest quarter of Section 12, T3N, R3W of the 4<sup>th</sup> P.M. in Schuyler County, Illinois. ("site" or "facility"). There are a total of 2,500 swine greater than 55 pounds maintained at Prairie State facility and 2,000 swine under 55 pounds.

4. Respondent PSM is and was at all times relevant to Count VII of the Second Amended Complaint, an Illinois limited liability company registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count VII of the Second Amended Complaint, in accordance with an agreement between the Respondents, Respondent PSM provided management services to Prairie State for the facility.

### B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondents have violated the Act and Board regulations as follows and allege the following facts:

1. At a time prior to July 7, 2008, a vertical clean-out pipe was knocked over or mowed over during hay baling operations on a hay field between the Prairie State facility's reception pit and the lagoon. At the time of the incident, the vertical clean-out pipes at the subject facility were not protected by bollards, fence posts, gates, fencing or other means of marking and protecting the pipes.

2. On July 7, 2008, with the event of a drain pull plug being removed in one of the nursery buildings to release waste, livestock waste entered the reception pit to a level that activated the pumps that transfer the contents of the reception pit to the lagoon. Livestock waste exited the pipeline at the decapitated clean-out pipe rather than at the lagoon, and entered a small unnamed tributary of one of the facility's on-site ponds.

3. The pond that received the swine waste has a surface area of .5 to .75 acres and during periods of high water discharges into an adjacent pond to the east. The east pond ultimately discharges to an unnamed tributary of Horney Branch.

4. The unnamed tributary of Horney Branch is identified as an intermittent creek on the USGS topographic map. Horney Branch is identified as a perennial creek on the USGS topographic map and therefore water flow exists in the creek all year. The unnamed tributary to the facility ponds and the facility ponds were conveyances, that is, surface hydrological connections, that discharge to waters of the United States.

5. On July 24, 2008, the Illinois EPA conducted an inspection of the Prairie State site in response to a report of the release. A narrow channel of swine waste was observed entering the north end of the receiving pond. The pond was covered with algae and had a septic odor consistent with that of swine waste. The north end of the pond was observed to have a dark gray/black color and to be turbid. An overflow pipe existed on the site, between the receiving pond and adjacent pond to the east.

6. At the time of the inspection, facility personnel indicated the facility intended to pump down the receiving pond and land apply the contents to wheat ground.

7. On October 29, 2008, the Illinois EPA inspector spoke to facility personnel to determine if the contents of the receiving pond had been land applied. On October 30, 2008, the facility responded that nothing had been pumped from the pond. Facility personnel reiterated that the two ponds were interconnected and periods of heavy or frequent rainfall result in a single pond.

8. At the time of July 7, 2008 discharge, Respondents Prairie State and PSM did not have a NPDES permit for the Prairie State facility, nor had the Respondents applied for one. The discharge from the clean-out pipe at the Prairie State Gilts facility was a point source discharge.

9. On the basis of the above facts, Count VII of the Second Amended Complaint alleges that the above actions and/or omissions caused, allowed or threatened the discharge of contaminants upon the land and into waters of the State so as to alter the physical or chemical properties of the waters and create or likely create a nuisance and thereby violated Sections 12(a), 12(d) and 12(f) of the Act, 415 ILCS 5/12 (a), (d), and (f), 35 Ill. Adm. Code 302.203 and 35 Ill. Adm. Code 309.102(a).

**C. Non-Admission of Violations**

The Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondents do not affirmatively admit the allegations of violation or asserted facts within Count VII of the Second Amended Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

1. In a letter dated March 2, 2009, Respondent PSM reported that the vertical cleanout that was the source of the subject discharge had been repaired and a fence has been

installed around the pipe to protect it from damage by equipment operators. Bright paint was applied to make the pipe more visible.

2. In a letter dated August 19, 2009, Respondent PSM indicated that as of July 24, 2009, the pond that received the discharge had been cleaned out. The contents of the connected ponds had been applied to farmland.

## II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in Count VII of the Second Amended Complaint, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42.

The Respondents shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondents shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondents under this Stipulation. In the event that the Respondents propose to sell or transfer any real property or operations subject to this Stipulation, the Respondents shall notify the Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondents shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondents site access and all cooperation necessary for Respondents to perform to completion any compliance obligation(s) required by this Stipulation. The Respondents shall provide a copy of this Stipulation to any such successor in interest and the Respondents shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondents and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondents. This provision does not relieve the Respondents from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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

Section 33(c) of the Act, 415 ILCS 5/33( c ) (2014), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;

3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties to this Stipulation state the following:

1. The environment was threatened by the discharge and release of livestock waste from the facility.
2. There is social and economic benefit when the facility operates in compliance with environmental regulations.
3. Operation of the Prairie State facility is and was at all times relevant hereto suitable for the area in which it operates.
4. It is technically practicable and economically reasonable for this facility to operate without discharges of livestock waste to the environment.
5. Upon adherence to the terms and conditions of this settlement agreement, Respondents have subsequently complied with the Act and the Board Regulations.

#### **IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties to this Stipulation state as follows:

1. The Respondents caused and allowed an unpermitted discharge on July 7, 2008 at the facility. The Respondents reported the discharge, pursuant to the requirements of 35 Ill. Adm. Code 580, via telephone on July 18, 2008, the same day the discharge of manure was discovered. Respondents filed a follow-up written report on July 21, 2008. On July 24, 2008, the Illinois EPA conducted an inspection of the Prairie State site in response to a report of the release and a narrow channel of swine waste from the discharge was still entering the north end of the receiving pond.

2. These ponds are alleged to have discharged to waters of the United States.

3. The release resulted in minimal economic benefit. Respondents would have greatly reduced the risk of a release if they had originally marked the clean-out ports to avoid the possibility of damage, and if they would have immediately repaired the clean-out port at the time the damage occurred.

4. Based upon the specific facts of this matter, the assessment of a penalty of Fourteen Thousand Dollars (\$14,000.00), jointly and severally to Respondents, will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent Prairie State has no previously adjudicated violations of the Act. Allegation of violation have been asserted against Respondent PSM in Counts I through VI and VIII of the Second Amended Complaint. On March 1, 2007, the Board entered an order against Professional Swine Management in the matter of *People v. Pinnacle Genetics, LLC and Professional Swine Management*, PCB 07-29, that required payment of a civil penalty in the amount of \$27,000 and included an order to cease and desist from future violations.

6. The Respondent reported the release, pursuant to the requirements of 35 Ill. Adm. Code 580, at the time it was discovered.

7. The settlement of this matter does not include a supplemental environmental project.

#### V. TERMS OF SETTLEMENT

##### A. Penalty Payment

1. The Respondents shall jointly and severally pay a civil penalty in the sum of Fourteen Thousand Dollars (\$14,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

##### B. Stipulated Penalties, Interest and Default

1. If the Respondents fail to complete any activity or fail to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondents shall provide notice to the Complainant and the Illinois EPA of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of One Hundred Dollars (\$100.00) per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. All stipulated penalties shall be payable within thirty (30) calendar days of the date of Complainant's demand.

2. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name, case number and the Respondents' federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

1. Respondent Prairie State shall account for any credits for plant available nitrogen from prior livestock waste application, prior nitrogen fixing crops and any other nutrient/fertilizer

sources in determining its maximum allowable plant available nitrogen rates and livestock waste application rates to be applied to its fields. The plant available nitrogen and livestock waste application rates shall not exceed the single year nitrogen requirements for the crops to be grown.

2. Respondent Prairie State shall determine and implement land application rates of livestock waste on its land application areas to assure that Section 502.510(b)(1) and (10) are met.

3. Respondent Prairie State shall keep records in compliance with 35 Ill. Adm. Code 502.102( c ) and 502.510(b)(16).

4. Respondent Prairie State commits that it (i) does not and will not use the same land application areas as any other livestock management facility; (ii) does not and will not transfer dead animals to and from any other livestock management facility; and (iii) does not and will not share dead animal disposal or handling facilities with any other livestock management facility. Respondent Prairie State's Comprehensive Nutrient Management Plan ("CNMP") shall be updated to include the provisions of this paragraph within sixty (60) days from the date the Board adopts and accepts this Stipulation.

5. Respondent Prairie State shall implement practices in accordance with 35 Ill. Adm. Code Sections 502.102 and 502.510(b) to prevent discharges from the production area and the livestock waste land application area. Respondents shall comply with all applicable requirements in 35 Ill. Adm. Code Sections 502.102 and 502.510(b), and shall ensure that Respondent Prairie State's CNMP is updated to comply with the same prior to submittal pursuant to paragraph V.D.6 below of this Stipulation.

6. Within six (6) months from the date the Board adopts a Final Order accepting this Stipulation, Respondents shall submit Respondent Prairie State's CNMP, as updated to comply with the requirements of paragraphs V.D.1, V.D.2, V.D.3, V.D.4 and V.D.5 above of this Stipulation, to the Illinois EPA and the Attorney General.

7. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the facility owned and operated by Respondents that is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary, but will observe all protocols established by the facility to ensure safety of the animals and public health, including those protocols restricting entry into the building structures.

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

9. Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of Count VII of the Second Amended Complaint.

**E. Release from Liability**

In consideration of the Respondents' joint and several payment of the \$14,000.00 penalty, Respondents' adherence to all compliance commitments required hereunder, Respondents' agreement to cease and desist from future violation of the Act and the Board's regulations as stipulated in Section V.D.9, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of Count VII of the Second Amended Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Second Amended Complaint filed on December 13, 2012. The Complainant reserves, and this Stipulation is

without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

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

**F. Correspondence, Reports and Other Documents**

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

As to the Complainant

Jane E. McBride  
Assistant Chief  
Environmental Bureau  
500 South Second Street  
Springfield, IL 62706

Michael Roubitchek  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

David Ginder  
Bureau of Water  
Springfield Regional Office  
1021 North Grand Ave. East  
PO Box 19276  
Springfield, IL 62794-9276

As to Respondent Prairie State

Claire A. Manning  
Brown Hay & Stephens, LLP  
205 S. Fifth Street  
PO Box 2459  
Springfield, IL 62705

As to Respondent PSM

Charles T. Patterson  
Patterson & Prah, LLP  
25043 Little Water Lane  
PO Box 767  
Custer, SD 57730-0767

**G. Enforcement and Modification of Stipulation**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. The Complainant, in consultation with the Illinois EPA, and the Respondents may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section V.F. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party to this Stipulation.

**H. Execution of Stipulation**

The undersigned representatives for each party to this Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

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

FOR THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

ALEC MESSINA, Acting Director  
Illinois Environmental Protection Agency

BY:



JOHN J. KIM  
Chief Legal Counsel

BY:



ANDREW B. ARMSTRONG, Chief  
Environmental Bureau  
Assistant Attorney General

DATE:

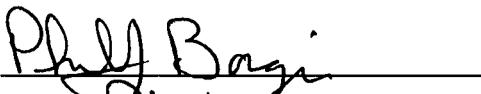
~~09/21/2016~~ 09/21/2016

DATE:

9/19/16

PRAIRIE STATE GILTS, LLC

BY:



Name: Phillip Bongie

Title: \_\_\_\_\_

DATE: \_\_\_\_\_

PROFESSIONAL SWINE MANAGEMENT, LLC

BY:



Name: Ted Utkes

Title: COO - Professional Swine Mgt.

DATE:

9/2/2016



Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.*, and the Board's regulations, alleged in Count VIII of the Second Amended Complaint, except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

## I. STATEMENT OF FACTS

### A. Parties to the Stipulation

1. On December 13, 2012, a Second Amended Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois. Count VIII was brought on the Attorney General's own motion pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e), against the Respondents.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4.

3. Respondent Little Timber is and was at all times relevant to Count VIII of the Second Amended Complaint an Illinois limited liability company registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count VIII, Little Timber owned a swine farrowing and gestation facility with a design capacity of 2,600 sows located at 2410 East County Road 1300, Carthage, Hancock County, Illinois 62321 (the "site" or "facility"). The legal description is the Southeast quarter of Section 26 and the Northeast quarter of Section 35, T5N, R6W in Carthage Township, Hancock County, Illinois. The facility is located within the watershed of Middle Creek, which is tributary to the LaMoine River.

4. PSM is and was at all times relevant to Count VIII an Illinois limited liability company registered and in good standing with the Illinois Secretary of State to do business in Illinois. At all times relevant to Count VIII, in accordance with an agreement between the Respondents, PSM provided management services to Little Timber for the Little Timber facility.

**B. Allegations of Non-Compliance**

Complainant and the Illinois EPA contend that the Respondents have violated the following provisions of the Act and Board regulations and allege the following facts:

1. At the time of a June 1, 2004 Illinois EPA inspection, dark colored, turbid, odorous leachate and surface runoff discharged west from the facility mortality compost unit. The runoff drains west in a ditch of the gravel access lane, then flows into a north/south waterway. The waterway drains southeast and passes under the gravel road. The subject waterway is tributary to Middle Creek. At the time of the inspection, there was a significant amount of skeletal remains, bones and other mortality material in the compost structure, and the inspector observed that there were bones, bone fragments and various skeletal remains exterior of the compost building where the back of the building had been damaged. The compost area, at the time of the June 1, 2004 inspection, was fenced on three sides and not protected from precipitation.

2. At the time of the June 1, 2004 inspection, the Illinois EPA inspector collected samples from the drainage channel leading from the dead swine compost unit. A sample collected 20 yards downstream from the compost unit consisted of liquid that was dark colored, very turbid with a strong, offensive, nauseating odor. The analytical results indicated the following parameter levels: ammonia, 1340 mg/l; BOD, 3500 mg/l; TSS, 8550 mg/l; fecal coliform, 130,000 per 100 ml. Another sample was collected from a waterway at a point downstream of the dead swine compost unit. At the location at which the sample was collected, the liquid in the waterway was slightly turbid. The analytical results indicated the following parameter levels: nitrate/nitrite, 33.1 mg/l; fecal coliform, 520 per 100 ml. Another sample was collected from a small, unnamed tributary to Middle Creek. The stream is located southeast of Little Timber downstream from the dead swine compost area. The collection point was located

on the south side of the gravel road. At the collection location the stream was slightly turbid with a dark color. The analytical results indicated the following parameter levels: BOD, 22 mg/l; TSS, 145 mg/l; fecal coliform, 7,500 per 100 ml.

3. On February 6, 2007 and then again on February 8, 2007, the Respondents reported the release of waste from their wastewater handling structures at the Little Timber facility. The release was caused when an 8-inch inlet line entering the wastewater lagoon froze. Wastewater was discharged from a pipe clean-out into a ditch on the north side of the lagoon. The Respondents constricted the spill with an earthen dike and applied sawdust to the spilled waste. The waste/sawdust slurry was then collected and land applied.

4. On February 21, 2007, the Illinois EPA conducted an inspection in response to the release report. At the time of the inspection, the Illinois EPA inspector observed running water, comprised primarily of snowmelt, along the drainage path north of the lagoon and in the downstream waterway. A brown manure residual was observed in the grass on this drainage path. Also, some snow containing brown frozen wastewater was observed along the path. The Respondents were advised to pump this snow and frozen wastewater into the lagoon. Also, the stormwater runoff, contaminated by the residual, was to be pumped into the lagoon.

5. At the time of the February 21, 2007 inspection, the flow in the drainage ditch located north of the lagoon was brown and slightly turbid. The ditch was discharging into the waterway in the adjacent field. The waterway was overflowing the sawdust dam due to the volume of snowmelt. The inspector observed a swine waste odor coming from the waterway downstream of the release site. A sample was collected from the waterway. The analytical results indicated the following parameter levels: ammonia, 34.5 mg/l; BOD, 120 mg/l; TSS, 104 mg/l.

6. On August 24, 2007, the Illinois EPA conducted an inspection of the Little Timber facility. At the time of the inspection, the Illinois EPA inspector observed that several swine had

been burned in a fire near the gravel road at the facility. The inspector observed skulls and various bones of swine in a burn area adjacent to a large stump. Surface water flows through this area and drains to the southeast. This waterway is tributary to Middle Creek which flows into the LaMoine River. Both tributaries to Middle Creek that exist at the Little Timber facility are identified as an intermittent creek on the USGS topographic map. Middle Creek is a perennial stream. Surface water samples were collected.

7. At the time of the August 24, 2007 inspection, the Illinois EPA inspector also observed the mortality compost structure at the site, which was in use. The inspector observed surface runoff draining west from the mortality compost structure.

8. At the time of the August 24, 2007 inspection, the Illinois EPA inspector collected a water sample from the waterway downstream of the dead swine burn site which was directly in the waterway downstream from the compost structure. The sample was collected from a low flow of a slightly turbid, light brown colored liquid with slight foam. The analytical results indicated the following parameter levels: TSS, 50 mg/l; fecal coliform, 20,000 per 100 ml. Another sample was collected directly down gradient from the compost structure. It was liquid collected from runoff from the dead swine compost structure. The liquid was turbid and dark colored. The analytical results indicated the following parameter levels: nitrate/nitrite, 51.2 mg/l; BOD, 17 mg/l; TSS, 33 mg/l; fecal coliform, 68,000 per 100 ml.

9. All of the Little Timber discharges drained to the waterways on the property which are tributary to the two unnamed tributaries of Middle Creek that exist on the property and flow into Middle Creek. As such, all of the described discharges were discharges to waters of the United States.

10. At the time of the June 1, 2004, February 23, 2007 and August 24, 2007 discharges to surface waters tributary to Middle Creek, Respondents Little Timber and PSM did not have a National Pollution Discharge Elimination System ("NPDES") permit for the Little

Timber facility, nor had the Respondents applied for one. The discharges from the clean-out pipe, compost structure and burn site are point source discharges.

11. Count VIII of the Second Amended Complaint alleges that the above actions and/or omissions caused, threatened, or allowed the discharge of contaminants upon the land and into waters of the State so as to alter the physical or chemical properties of the waters and create or likely create a nuisance and thereby violated Sections 12(a), 12(d) and 12(f) of the Act, 415 ILCS 5/12(a), (d), (f), 35 Ill. Admin Code 302.203 and 35 Ill. Adm. Code 309.102(a).

**C. Non-Admission of Violations**

The Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondents do not affirmatively admit the allegations of violation within Count VIII of the Second Amended Complaint and referenced within Section I.B herein, or the alleged facts, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

1. Respondents modified the Little Timber facility composting structure such that all liquids from the compost are contained. A reinforced concrete floor was installed underneath the composting structure and the work area in front of the compost bays. The ten-foot portion of the work area closest to the compost bays was reconstructed so that it slopes slightly toward the bays and has a four-inch curb that keeps fresh water from outside the composting structure from entering the compost bays. Concrete retaining walls were constructed that extend out along the lengths of the work area in front of the compost bays and effectively prevent any liquids from leaving this area. All contained leachate is reincorporated into the compost. Respondents installed a roof and enclosure over the composting structure, which helps maintain appropriate compost moisture content and prevent precipitation from coming into contact with

the composting material. All portions of the composting structure that were previously constructed with wood were replaced with concrete. Any excess accumulated rainfall is pumped into the compost to assist in maintaining adequate compost moisture levels, pumped to the onsite lagoon, or land applied. Since the Illinois EPA's August 24, 2007 inspection, Respondents have adhered to a written composting facility operation and maintenance procedure to ensure that all mortalities are properly composted in the composting structure.

2. In response to the February 2007 wastewater release, personnel constricted the release with an earthen dike and applied sawdust to the spilled wastewater.

3. The cause of the February 2007 release was determined to be a frozen portion of the discharge pipe from the waste storage pits. The trickling of wastewater from the building waste storage pits gradually froze and blocked the discharge pipe, which in turned caused manure to spill out of the pit cleanout pipe. To repair the discharge pipe, the frozen section was removed. To ensure that this type of incident would not happen in the future, the cleanout pipe was extended so that its elevation is higher than the elevation of the pits. Thus, even if there was another frozen buildup within the discharge pipe, the manure would not discharge out the clean out pipe; rather the manure will remain in the pits. Also, additional top soil was added on top of the discharge pipe to further insulate the discharge pipe from winter conditions.

4. Respondents have confirmed for the Illinois EPA that all facility cleanout pipes exist at an elevation greater than the elevation of the structures served by the cleanouts.

## II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents shall not raise as a defense to any enforcement action taken, pursuant to this Stipulation, the failure of any of their

officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in Count VIII of the Second Amended Complaint, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42.

The Respondents shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondents shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondents under this Stipulation. In the event that the Respondents propose to sell or transfer any real property or operations subject to this Stipulation, the Respondents shall notify the Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondents shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondents site access and all cooperation necessary for Respondents to perform to completion any compliance obligation(s) required by this Stipulation. The Respondents shall provide a copy of this Stipulation to any such successor in interest and the Respondents shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the

Respondents and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondents. This provision does not relieve the Respondents from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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

Section 33(c) of the Act, 415 ILCS 5/33( c ) (2014), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties to this Stipulation state the following:

1. The environment was threatened by the inadequate containment of the composting structure, by the release of wastewater from the frozen lagoon inlet pipe, and by the burning of several dead swine on the land, uncontained, in a drainage way.
2. There is social and economic benefit to the Little Timber facility when it operates in compliance with environmental regulations.
3. Operation of the Little Timber facility is suitable for the area in which it is located.

4. It is technically practicable and economically reasonable for the Little Timber facility to operate its composting structure with adequate containment measures, to maintain the lagoon wastewater inlet pipe in good operating condition, and to dispose of mortalities in the composting structure.

5. Upon adherence to the terms and conditions of this settlement agreement, Respondents have subsequently complied with the Act and the Board Regulations.

#### **IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties to this Stipulation state as follows:

1. The Illinois EPA documented two incidents of releases to surface water at Respondent's facility and an incident of a pollution hazard in a waterway: June 1, 2004, runoff from the mortality compost unit; February 6-8, 2007, a release from the facility's waste handling structures; and August 24, 2007, a mortality burn area existed in a drainage way.

2. Respondent modified its mortality compost structure in response to the 2004 release. At the time of an August 2011 Illinois EPA inspection, it was observed that the mortality compost structure has been additionally improved to control and contain leachate runoff. The February 2007 release occurred due to the plugging/freezing of a discharge pipe located between the swine confinement buildings and the wastewater lagoon. The plugged discharge pipe surcharged when the shallow pits in the gestation building were pulled. The surcharging resulted in a discharge from a cleanout pipe into a ditch on the north side of the facility's lagoon. Respondents' personnel timely took steps to stop the discharge flow, replace the section of the inlet line (discharge pipe) that broke due to freezing, extended the cleanout pipe so that it is higher than the pits, and added additional top soil on top of the inlet line to further insulate it from winter conditions. With regard to the mortality burn site observed at the time of the August 2007 inspection, existing on the site as a water pollution hazard, there is no documentation of any observations of mortality burn areas on site at the time of the August 2011 Illinois EPA inspection.

3. Complainant contends that the two releases and the water pollution hazard on site resulted in nominal economic benefit. The risk of a composting structure discharge would have been reduced if the existing composting structure modifications had been constructed at an earlier date. The risk of the lagoon inlet pipe freezing and releasing wastewater would have been reduced if the cleanout pipe elevation had been originally installed at a higher elevation

than the pits or raised earlier in the facility's tenure of operations, and if the discharge pipe would have been further underground.

4. Complainant contends, based upon the specific facts of this matter, that the assessment of a penalty of Fifteen Thousand Dollars (\$15,000.00) jointly and severally to Respondents will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent Little Timber, LLC has no previously adjudicated violations of the Act. Allegation of violation have been asserted against Respondent Professional Swine Management in Counts I through VII of the Second Amended Complaint. On March 1, 2007, the Board entered an order against Professional Swine Management in the matter of *People v. Pinnacle Genetics, LLC and Professional Swine Management*, PCB 07-29, that required payment of a civil penalty in the amount of \$27,000 and included an order to cease and desist from future violations.

6. Pursuant to the requirements of 35 Ill. Admin. Code Part 580, the Respondents reported the February 2007 wastewater release to the Illinois EPA at the time it was discovered via telephone on February 6, 2007 and February 8, 2007, and via a follow-up report submitted to the Illinois EPA dated February 22, 2007. The Respondents did not self-report the 2004 release.

7. The settlement of this matter does not include a supplemental environmental project.

## V. TERMS OF SETTLEMENT

### A. Penalty Payment

1. The Respondents shall, jointly and severally, pay a civil penalty in the sum of Fifteen Thousand Dollars (\$15,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

**B. Stipulated Penalties, Interest and Default**

1. If the Respondents fail to complete the requirements of Section V.D.4 of this Stipulation by the date specified in that section, the Respondents shall provide notice to the Complainant and the Illinois EPA of each failure to comply with that section and shall pay stipulated penalties in the amount of One Hundred Dollars (\$100.00) per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondents for their noncompliance with that section. All stipulated penalties shall be payable within thirty (30) calendar days of the date of Complainant's demand.

2. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name, case number and the Respondents' federal tax identification numbers shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

1. Respondents shall continue to dispose of all mortalities in the composting structure and not burn any dead swine, conduct periodic inspections of the composting structure and maintain the integrity of the composting structure. Respondents shall maintain the integrity of the lagoon inlet line. As to Respondent PSM, the requirements of this paragraph shall only be operative when Respondent PSM is coordinating composting and lagoon activities pursuant to a contract with Respondent Little Timber.

2. Respondent Little Timber commits that it (i) does not and will not use the same land application areas as any other livestock management facility; (ii) does not and will not transfer dead animals to and from any other livestock management facility; and (iii) does not and will not share dead animal disposal or handling facilities with any other livestock management facility. Respondent Little Timber's Comprehensive Nutrient Management Plan ("CNMP") shall be updated to include the provisions of this paragraph within sixty (60) days from the date the Board adopts and accepts this Stipulation.

3. Respondents shall comply with all applicable requirements in 35 Ill. Admin. Code Sections 502.102 and 502.510(b), and shall ensure that Respondent Little Timber's CNMP is

updated to comply with the same prior to submittal pursuant to paragraph V.D.4 below of this Stipulation.

4. Within six (6) months from the date the Board adopts and accepts this Stipulation, Respondents shall submit Respondent Little Timber's CNMP, as updated to comply with the requirements of paragraphs V.D.2 and V.D.3 above of this Stipulation, to the Illinois EPA and the Attorney General.

5. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary, but will observe all protocols established by the facility to ensure safety of the animals and public health, including those protocols restricting entry into the building structures.

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

7. Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of Count VIII of the Second Amended Complaint.

**E. Release from Liability**

In consideration of the Respondents' payment of the \$15,000.00 penalty, Respondents' completion of all activities required hereunder, Respondents' agreement to cease and desist from future violation of the Act and the Board's regulations as stipulated in Section V.D.7, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges

the Respondents from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of Count VIII of the Second Amended Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Second Amended Complaint filed on December 13, 2012. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

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

**F. Correspondence, Reports and Other Documents**

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

As to the Complainant

Jane E. McBride  
Assistant Chief  
Environmental Bureau  
500 South Second Street  
Springfield, IL 62706

Michael Roubitchek  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

Eric Ackerman  
Bureau of Water  
Peoria Regional Office  
5407 North University  
Arbor Hall, #113  
Peoria, IL 61614

As to Respondent Little Timber

Edward W. Dwyer  
HeplerBroom, LLC  
3150 Roland Avenue  
Springfield, IL 62703

As to Respondent PSM

Charles T. Patterson  
Patterson & Prah, LLP  
25043 Little Water Lane  
P.O. Box 767  
Custer, SD 57730-0767

**G. Enforcement and Modification of Stipulation**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. The Complainant, in consultation with the Illinois EPA, and the Respondents may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section V.F. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party to this Stipulation.

**H. Execution of Stipulation**

The undersigned representatives for each party to this Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY: *Andrew Armstrong*  
ANDREW B. ARMSTRONG, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 09/21/2016

FOR THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

ALEC MESSINA, Acting Director  
Illinois Environmental Protection Agency

BY: *[Signature]*  
JOHN J. KIM  
Chief Legal Counsel

DATE: 9/19/16

LITTLE TIMBER, LLC

BY: *Ronald D. Starr*

Name: Ronald D. Starr

Title: owner

DATE: 6/25/2016

PROFESSIONAL SWINE MANAGEMENT, LLC

BY: *Ted R. Utkes*

Name: Ted R. Utkes

Title: COO - Professional Swine Mgt

DATE: 8/25/2016

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB NO. 10-84
	)	(Enforcement)
PROFESSIONAL SWINE MANAGEMENT,	)	
LLC, an Illinois limited liability	)	
corporation, et al.,	)	
	)	
Respondents.	)	

**MOTION FOR RELIEF FROM HEARING REQUIREMENT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2012), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2012).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

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

BY: s/Jane E. McBride  
Jane E. McBride  
Environmental Bureau  
Assistant Attorney General  
500 South Second Street  
Springfield, Illinois 62701  
217/782-9031  
[jmcbride@atg.state.il.us](mailto:jmcbride@atg.state.il.us)  
[ebs@atg.state.il.us](mailto:ebs@atg.state.il.us)