

DEC 29 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS)
)
 Complainant,) PCB No. 00-104
) (Enforcement)
 v.)
)
 THE HIGHLANDS, L.L.C., et al.,)
)
 Respondents.)

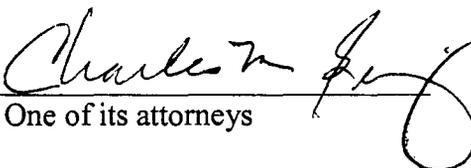
NOTICE OF FILING

To:	Bradley Halloran Hearing Officer Illinois Pollution Control Board James R. Thompson Center, Suite 11-500 100 West Randolph Chicago, Illinois 60601	Jane E. McBride Assistant Attorney General Environmental Law Bureau Office of the Illinois Attorney General 500 South Second Street Springfield, Illinois 62706
	Jeffrey W. Tock Harrington, Tock & Royse Huntington Towers, Suite 601 201 West Springfield Avenue P.O. Box 1550 Champaign, Illinois 61824-1550	

PLEASE TAKE NOTICE that on December 29, 2004, we filed with the Illinois Pollution Control Board the attached RESPONDENT MURPHY FARMS INC.'S RESPONSE TO COMPLAINANT'S MOTION FOR LEAVE TO FILE A SUR-REPLY REGARDING MURPHY FARMS' MOTION TO DISMISS SECOND AMENDED COMPLAINT, copies of which are hereby served upon you.

Respectfully submitted,

MURPHY FARMS, INC.

By: 
One of its attorneys

Dated: December 29, 2004

Charles M. Gering
McDermott, Will & Emery
227 West Monroe Street
Chicago, Illinois 60606
(312) 372-2000

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DEC 29 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

THE HIGHLANDS, LLC, an Illinois limited liability corporation, and MURPHY FARMS, INC., (a division of MURPHY-BROWN, LLC, a Delaware limited liability corporation, and SMITHFIELD FOODS, INC., a Virginia corporation),

Respondents.

No. PCB No. 00-104
(Enforcement)

**RESPONDENT MURPHY FARMS, INC.'S RESPONSE TO
COMPLAINANT'S MOTION FOR LEAVE TO FILE A SUR-REPLY REGARDING
MURPHY FARMS' MOTION TO DISMISS SECOND AMENDED COMPLAINT**

Complainant has requested leave to file a sur-response with respect to the motion to dismiss filed by respondent Murphy Farms, Inc. ("Murphy Farms"). Complainant's motion should be denied for two reasons.

First, Murphy Farms' response included no new affidavits or other evidence, and was confined to addressing the matters raised in the State's response to Murphy Farms' motion. As a result, the State's request for leave to file a sur-response amounts to a request for another opportunity to address matters the State could have addressed in its response brief. The State's motion for leave to file a sur-response does not argue otherwise; the State contends that Murphy Farms has misstated the law and mischaracterized the supporting materials submitted with the State's response brief. State's Motion, para. 4. Even if this were true, which it is not, the Board may review the cases cited in Murphy Farms' briefs for itself and decide whether they support Murphy Farms' position. Similarly, the Board has all of the materials the State filed with its

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response brief, and may evaluate the extent to which those materials support or undermine the parties' positions with respect to dismissal.

Second, the Board's procedural rules do not contemplate that parties should be permitted to file sur-responses. Indeed, those rules specify that the moving party may reply in support of its motion only in limited circumstances, and with leave of the Board. 35 Ill. Adm. Code § 101.500(e). There is no provision of the Board's procedural rules which addresses further briefing with respect to motions by the responding party.

The State has offered no compelling reason that it should be given leave to lengthen the briefing process and further delay the Board's consideration of Murphy Farms' motion to dismiss. Consequently, the State's motion for leave to file a sur-response should be denied.

Dated: December 29, 2004

MURPHY FARMS, INC.

By: 
One of Its Attorneys

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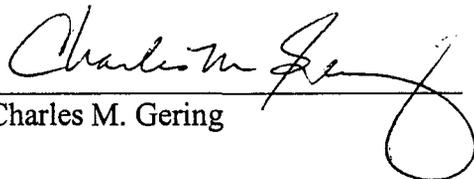
CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that on December 29, 2004, I served the foregoing NOTICE OF FILING and attached RESPONDENT MURPHY FARMS, INC.'S RESPONSE TO COMPLAINANT'S MOTION FOR LEAVE TO FILE A SUR-REPLY REGARDING MURPHY FARMS' MOTION TO DISMISS SECOND AMENDED COMPLAINT, by facsimile and U.S. Mail with proper postage prepaid upon:

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Hearing Officer
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