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DEC 29 2004

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 27, 2004

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

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

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING and MOTION FOR LEAVE TO FILE A SUR-REPLY REGARDING RESPONDENT MURPHY'S MOTION TO DISMISS in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

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

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

JEM/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 29 2004

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

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

Respondents.

PCB NO. 00-104
(Enforcement)

STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: Mr. Jeffrey W. Tock
Harrington, Tock & Royse
201 W. Springfield Avenue
Suite 601
Champaign, IL 61824-1550

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

PLEASE TAKE NOTICE that on December 27, 2004, I mailed for filing with the Clerk of the
Pollution Control Board of the State of Illinois, MOTION FOR LEAVE TO FILE A SUR-REPLY
REGARDING RESPONDENT MURPHY'S MOTION TO DISMISS, a copy of which is attached
hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

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

BY: 
JANE E. McBRIDE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 27, 2004

CERTIFICATE OF SERVICE

I hereby certify that I did on December 27, 2004, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING and MOTION FOR LEAVE TO FILE A SUR-REPLY REGARDING RESPONDENT MURPHY'S MOTION TO DISMISS

To: Mr. Jeffrey W. Tock
Harrington, Tock & Royse
201 W. Springfield Avenue, Ste. 601
P.O. Box 1550
Champaign, IL 61824-1550

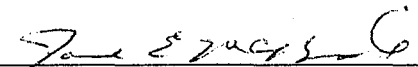
Mr. Charles M. Gering, Esq.
McDermott, Will & Emery
227 West Monroe Street
Chicago, IL 60606-5096

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

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

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

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


Jane E. McBride
Assistant Attorney General

This filing is submitted on recycled paper.

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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 North Carolina limited
liability corporation, and SMITHFIELD
FOODS, INC., a Virginia corporation).

Respondents.

PCB No. 00-104
(Enforcement)

**MOTION FOR LEAVE TO FILE A SUR-REPLY
REGARDING RESPONDENT MURPHY'S MOTION TO DISMISS**

NOW COMES Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel* Lisa Madigan, Attorney General of the State of Illinois and moves for leave to file a sur-reply in response to Respondent Murphy's reply regarding its Motion to Dismiss, and in support thereof, Plaintiff states as follows:

1. On December 27, 2004, Complainant received Respondent Murphy's reply to Complainant's response to Respondent Murphy's motion to dismiss.
2. In its reply, Respondent Murphy greatly clarified its position regarding the standards applicable to the issues that are the subject of its Motion to Dismiss. These issues include the question of the basis for a finding of liability under the Illinois Environmental Control Act, and the requisite allegation of fact necessary to meet pleading standards, particularly in light of the applicable legal standard for a finding of liability.
3. Respondent Murphy's position is patently flawed. Now that Respondent's position has been so much better articulated, particularly specifically in the context of Complainant's response to the original motion, the Complainant should be given an opportunity to respond.

4. Complainant stands to be materially prejudiced if it is not allowed to respond to the reply. The Respondent has grossly misstated the law. In so doing, it has greatly mischaracterized supporting materials submitted in conjunction with Complainant's response.

5. The basis of liability under the Illinois Environmental Protection Act includes a finding of sufficient ownership interest and ability to exert control. Complainant has submitted sufficient evidence to substantiate its allegations that Respondent Murphy had the ability to exert control. In its reply, Respondent talks about "theoretical control". To the contrary, by the very terms of its agreement with The Highlands, it is obvious that Respondent Murphy had an actual ability to exert control.

6. Respondent chooses to deceptively place focus upon the physical facility of The Highlands, rather than more appropriately address The Highlands' hog facility for what it is, a sow production operation. It is the operation conducted at the facility that is the source of the pollution. Respondent was a full participant in that operation and partial owner of the operation.

7. It is useful for Respondent Murphy to confuse nuisance standards with statutory criteria, as it continues to attempt to do in its reply, because nuisance standards include the concept of "conduct". Case law applicable to statutory criteria focuses upon ownership, a person who may cause or allow pollution to occur, and the ability to control. Respondent Murphy's participation in the Highland's operation certainly met the criteria applicable to a finding of liability under the Illinois Environmental Control Act.

8. It is obvious from the foregoing, that Respondent Murphy, in its reply, has now, for the first time, narrowed and much more specifically defined its argument. Complainant should be allowed to respond to Respondent Murphy's reply, now that Respondent's position has been fully defined.

9. Complainant requests that it be granted two weeks in which to file a sur-reply.

WHEREFORE, Complainant respectfully requests leave to file a sur-reply regarding

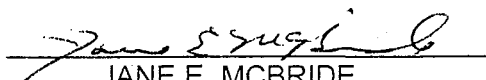
Respondent Murphy's pending Motion to Dismiss. Said sur-reply shall be due two weeks from the date upon which this motion is granted.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement Division

BY:


JANE E. MCBRIDE
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
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