

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUN 07 2005

PEOPLE OF THE STATE OF ILLINOIS)

Complainant,)

v.)

THE HIGHLANDS, L.L.C., et al.,)

Respondents.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 00-104
(Enforcement)

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 June 7, 2005, we filed with the Illinois Pollution Control Board the attached:

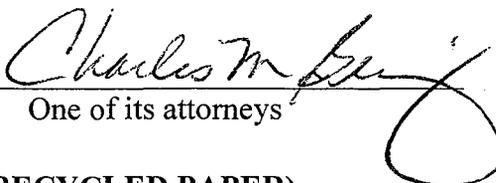
- (1) **RESPONDENT MURPHY FARMS, INC.'S MOTION FOR A ONE-DAY EXTENSION OF THE DEADLINE FOR ITS ANSWER AND FOR LEAVE TO FILE ANSWER AND AFFIRMATIVE DEFENSES INSTANTER, and**
- (2) **RESPONDENT MURPHY FARMS, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO SECOND AMENDED COMPLAINT,**

copies of which are hereby served upon you.

Respectfully submitted,

MURPHY FARMS, INC.

Dated: June 7, 2005

By: 
One of its attorneys

(THIS FILING IS MADE ON RECYCLED PAPER)

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

(THIS FILING IS MADE ON RECYCLED PAPER)

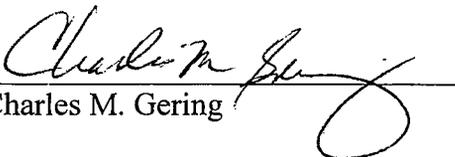
CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that on June 7, 2005, I served the foregoing Notice of Filing and attached (1) **RESPONDENT MURPHY FARMS, INC.'S MOTION FOR A ONE-DAY EXTENSION OF THE DEADLINE FOR ITS ANSWER AND FOR LEAVE TO FILE ANSWER AND AFFIRMATIVE DEFENSES INSTANTER**, and (2) **RESPONDENT MURPHY FARMS, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO SECOND AMENDED COMPLAINT**, by U.S. Mail with proper postage prepaid upon:

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph
Chicago, Illinois 60601

Jane E. McBride
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Charles M. Gering

CHI99 4482581-1.047331.0013

(THIS FILING IS MADE ON RECYCLED PAPER)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JUN 07 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

No. PCB No. 00-104
(Enforcement)

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.

RESPONDENT MURPHY FARMS, INC.'S MOTION FOR A ONE-DAY EXTENSION OF THE DEADLINE FOR ITS ANSWER AND FOR LEAVE TO FILE ANSWER AND AFFIRMATIVE DEFENSES INSTANTER

Respondent Murphy Farms, Inc. ("Murphy") hereby moves the Board to enter an Order granting Murphy a one-day extension of the deadline for filing its answer to Complainant's Second Amended Complaint (the "Complaint"), and granting Murphy leave to file its Answer and Affirmative Defenses to the Complaint instanter. In support of its motion, Murphy states as follows:

1. In its May 5, 2005 Order, the Board set a filing deadline of June 4, 2005 for Murphy's answer to the Complaint. Because June 4, 2005 fell on a Saturday, Murphy's answer was due on the following Monday, June 6, 2005.
2. Murphy prepared its answer and affirmative defenses for filing on June 6, 2005, but due to a misunderstanding among personnel at Murphy's counsel's office, Murphy's answer inadvertently was not filed on June 6.

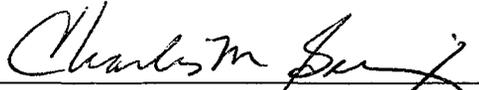
3. The inadvertent delay in the filing of Murphy's answer will not cause any delay of the dates agreed to by the parties for discovery activities. No hearing date has been set in this matter.

4. Murphy's counsel has spoken with counsel for Complainant, and Complainant does not object to the relief requested in this motion.

WHEREFORE, for the foregoing reasons, Respondent Murphy Farms, Inc. respectfully requests that the Board enter an order granting Murphy a one-day extension of the filing deadline for its answer, and granting Murphy leave to file its Answer and Affirmative Defenses to the Complaint instantaner.

Dated: June 7, 2005

MURPHY FARMS, INC.

By: 
One of Its Attorneys

Charles M. Gering
McDermott Will & Emery LLP
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Chicago, Illinois 60606-5096
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CHI99 4482605-1.047331.0013

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.)

RECEIVED
CLERK'S OFFICE
PCB No. 002764
(Enforcement)
JUN 07 2005
STATE OF ILLINOIS
Pollution Control Board

**RESPONDENT MURPHY FARMS, INC.'S ANSWER AND
AFFIRMATIVE DEFENSES TO SECOND AMENDED COMPLAINT**

Respondent Murphy Farms, Inc. ("Murphy"), for its Answer to Complainant's Second Amended Complaint (the "Complaint"), states as follows:

COUNT I

AIR POLLUTION - ODOR VIOLATIONS

1. This Count is brought 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 at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), (e) (1998).

ANSWER: Murphy admits that Count I is brought by the Attorney General of the State of Illinois on behalf of the People of the State of Illinois pursuant to Sections 42(d) and (e) of the Act. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 1 and therefore denies each and every such allegation.

2. The Illinois EPA is an agency of the State of Illinois created by the General Assembly in Section 4 of the Act, 415 ILCS 5/4(1998), and which is charged, inter alia with the duty of enforcing the Act.

ANSWER: Murphy admits the allegations in paragraph 2.

3. This Count is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (1998), after providing the Respondents The Highlands, LLC and Murphy Farms, Inc. with notice and the opportunity to meet with the Illinois EPA.

ANSWER: Murphy admits that Count I purports to state a cause of action pursuant to Section 31 of the Act, and that Murphy and The Highlands, LLC ("Highlands") met with representatives of Illinois EPA and the Illinois Attorney General's Office prior to the filing of the complaint in this matter. Further answering, Murphy denies each and every remaining allegation in paragraph 3.

4. Respondent The Highlands, LLC ("Highlands") is a limited liability corporation, registered and in good standing in the State of Illinois. Highlands is a member-managed LLC. The members of the LLC are Douglas B. Baird, 1124 Knox Highway 18, Williamsfield, Illinois 61489; James R. Baird, 2218 Knox Road 100N, Yates City, IL 61572; and Patricia A. Baird, 2218 Knox Road 100N, Yates City, IL 61572. The registered agent is John J. Hattery, Suite 402, Hill Arcade, Galesburg, IL 61401.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 and therefore denies each and every such allegation.

5. At the time of filing of this Amended Complaint, the status of Murphy Farms, Inc., in the State of Illinois, as of January 2, 2002, is that of a revoked corporation. The corporation failed to file its annual report. At the time of filing of the original Complaint in this matter, Respondent Murphy Farms, Inc., a/k/a Murphy Family Farms ("Murphy"), was a North Carolina corporation registered to do business in the State of Illinois in good standing. The registered agent, at the timing of the filing of the original complaint, was Gerald W. Shea, 547 S. LaGrange Rd., LaGrange, IL 60525. Some time later, the registered agent became Charles Gehring [*sic*], Esq., McDermott, Will & Emery LLP, 227 West Monroe Street, Chicago, Illinois 60606-5096. Since the time of filing of the original Complaint in this matter, Murphy Farms, Inc. has been acquired by Smithfield Foods, Inc. of Smithfield, Virginia. Murphy Farms, Inc., is now a division of Murphy-Brown, LLC which is the hog production group for and a division of Smithfield Foods, Inc. Murphy-Brown, LLC is located at 2822 Highway 24 West, Warsaw, North Carolina 28398.

ANSWER: Murphy admits (1) that it is not currently registered with the Illinois Secretary of State to do business in the State of Illinois, (2) that at the time the complaint was filed in this matter Murphy was a North Carolina corporation registered to do business in the State of Illinois, (3) that its registered agent at the time the complaint was filed in this matter was Gerald W. Shea, 547 S. LaGrange Rd., LaGrange, IL 60525, and that some time thereafter its registered agent was Charles M. Gering, McDermott, Will & Emery, 227 West Monroe Street, Chicago, Illinois 60606-5096, (4) that Murphy was acquired by Smithfield Foods, Inc. of Smithfield, Virginia, (5) that Murphy is now a division of Murphy-Brown, LLC, and (6) that Murphy-Brown, LLC is located at 2822 Highway 24 West, Warsaw, North Carolina 28398. Further answering, Murphy denies each and every remaining allegation in paragraph 5.

6. Respondents Highlands and Murphy own and operate a swine facility located just south of Williamsfield in the NE 1/4, Section 10, T.10N, R.4E, Elba Township, Knox County, Illinois (the "facility"). The facility's offices are located at 1122 Knox Highway 18, Williamsfield, IL 61489.

ANSWER: Murphy admits that there is a hog farm (the "Farm") located south of Williamsfield, Illinois, and that the Farm's offices are located at 1122 Knox Highway 18, Williamsfield, Illinois 61489, but denies each and every remaining allegation in paragraph 6.

7. Upon information and belief, Respondent Highlands owns and operates the property and buildings and shares in the operation of the wastewater treatment facility, and provides labor for operation of the facility.

ANSWER: Murphy admits that Highlands owns and operates the Farm, operates the waste treatment system at the Farm, and provides labor for operation of the Farm, but denies each and every remaining allegation in paragraph 7.

8. Upon information and belief, Respondent Murphy owns all of the hogs at the facility, owns and provides all feed, owns and provides all medication, owns and provides anything else that goes in and on the hogs such as syringe needles and marking sticks, provides

for the transportation of all hogs, provides for veterinary services for the hogs, trains the facility's employees and otherwise shares in the direct control and management of the operation with Respondent Highlands. All hog excrement that is deposited and stored at the facility comes from hogs owned by Respondent Murphy.

ANSWER: Murphy admits that at the time the complaint was filed in this matter, (1) it owned hogs raised by Highlands at the Farm, (2) it provided feed, medication, syringe needles, marking sticks, veterinary services, and employee training in connection with Highlands' operation of the Farm, and (3) its hogs generated waste. Further answering, Murphy denies each and every remaining allegation in paragraph 8.

9. Upon information and belief, Respondent Murphy knew of and was involved in the siting of the facility at its existing location.

ANSWER: Murphy admits that it was aware of the siting of the Farm at its existing location, but denies each and every remaining allegation in paragraph 9.

10. The facility is a 3,650 sow farrow-to-wean operation, comprised of a gestation building, breeding building, a farrowing building, a nursery and a finishing building.

ANSWER: Murphy admits the allegations in paragraph 10.

11. Upon information and belief, at the time of siting and construction of the facility, Respondent Murphy knew what the capacity and size of the operation was to be and has since supplied the 3,650 sows necessary to meet the design capacity of this facility and keep it fully operational.

ANSWER: Murphy admits that it was aware of the design capacity of the Farm and that it provided sows that were raised at the Farm, but denies each and every remaining allegation in paragraph 11.

12. At the time of the filing of the original Complaint in this matter, the livestock waste management system being utilized at the facility was a multiple lagoon system designed and, upon information and belief, operated by Bion Technologies, Inc. ("Bion"), a Colorado corporation. Swine waste and wastewater generated in the buildings was collected in 16-inch deep pits under the buildings. The building pits were drained into the lagoon system. There were four lagoons in the system that were operated in series. The third lagoon was divided into two

cells by a synthetic curtain partition. The system utilized four surface aerators. There were two five horsepower aerators in the first lagoon, one five horsepower aerator in the first cell of the third lagoon and one three horsepower aerator in the second cell of the third lagoon. Some of the swine wastewater from the first cell of the third lagoon was recycled to the buildings as pit recharge water. Wastewater in the third and fourth lagoon was land applied via a traveling gun irrigation unit. According to Bion, swine waste solid sludge that accumulated in the second lagoon was to be periodically land applied.

ANSWER: Murphy admits that at the time the complaint was filed in this matter, (1) a multiple-lagoon waste management system designed by Bion was in use at the Farm, (2) waste was collected in 16-inch deep pits under certain of the buildings that housed hogs at the Farm, (3) the pits were drained into the lagoon system, (4) the design of the lagoon system included aerators in certain of the lagoons, and (5) the design of the waste treatment system called for certain waste to be land-applied. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 12 and therefore denies each and every such allegation.

13. According to descriptions and explanations provided by Bion, the aerated and non-aerated zones of its multiple cell lagoon system were designed to promote a dense facultative biological environment that minimizes anaerobic volatilization of nitrogen, maximizes nutrient settling in the solids, and maximizes output as nitrogen gas when volatilization occurred. Bion contended the system was managed by manipulating conditions to promote the evolution of the microbial mix, so that an ideal microbial balance would be achieved that would maximize nutrient assimilation in the solids and liquid waste that will eventually be land applied. Once the desired microbial balance was achieved, according to Bion, the system is supposed to provide adequate odor control due to the fact that the system is properly balanced and operating at full potential.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 and therefore denies each and every such allegation.

14. In order to achieve odor control, upon information and belief, the Bion multiple lagoon system in existence at the facility at the time of the filing of the original Complaint, according to claims made by Bion, was either to be manually adjusted by Bion personnel and Highlands personnel or able to adjust itself via its "dense facultative biological environment" to

accommodate variations in the farm operational procedures, unexpected failures or fluctuations in farm procedures, and variations in climatic and weather conditions throughout the year.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 and therefore denies each and every such allegation.

15. Upon information and belief, Respondent Murphy was involved in the selection of the Bion system as the means of handling and treating swine waste at the facility.

ANSWER: Murphy denies each and every allegation in paragraph 15.

16. Shortly after the filing of the original Complaint in this matter, Bion withdrew from its contractual obligations at the Highlands' facility.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 and therefore denies each and every such allegation.

17. In April 2000, Respondents Highlands and Murphy began to convert the Highland [sic] facility's lagoon system to a BioSun system. The BioSun system utilizes the two large lagoons of the original lagoon series. The two small lagoons that served as the entry point for the waste stream in the Bion system, were taken out of operation but have never been cleaned out and properly closed.

ANSWER: Murphy admits that during 2000, Highlands began using waste treatment technology provided by BioSun, and that Highlands re-configured its waste treatment system at that time such that only two lagoons are used for waste treatment. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 17 and therefore denies each and every such allegation.

18. Upon information and belief, construction of the facility began in the fall of 1997.

ANSWER: Murphy admits the allegations in paragraph 18.

19. Sows were first brought into the facility on December 21, 1997, at which time operations commenced at the facility.

ANSWER: Murphy admits that sows were brought to the Farm on December 21, 1997. Further answering, Murphy lacks knowledge or information sufficient to form a belief as

to the truth of the remaining allegations in paragraph 19 and therefore denies each and every such allegation.

20. Livestock waste was first diverted to the multiple lagoon system on December 28, 1997. At that time, the four lagoons had been constructed and the majority of the transfer piping had been installed.

ANSWER: Murphy admits that four lagoons had been constructed at the Farm on December 28, 1997. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 20 and therefore denies each and every such allegation.

21. Sows first farrowed at the facility on May 11, 1998.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 and therefore denies each and every such allegation.

22. On June 2, 1998, a majority of the swine confinement buildings had been constructed, and construction was underway on finishing and nursery buildings. Initial earthwork for a second farrowing building was completed on June 2, 1998. The second farrowing building, at the time of the filing of this complaint, has not been constructed.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 and therefore denies each and every such allegation.

23. The Illinois Department of Agriculture issued a Final Notice of Lagoon Registration and Certification of Completion to Highlands on August 3, 1998.

ANSWER: Murphy admits the allegations in paragraph 23.

24. Section 3.02 of the Act, 415 ICS 5/3.02 (1998), states:

“AIR POLLUTION” is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

ANSWER: Murphy admits that paragraph 24 accurately sets forth the quoted language of Section 3.02 of the Act.

25. Section 3.06 of the Act, 415 ILCS 5/3.06 (1998), states:

“CONTAMINANT” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

ANSWER: Murphy admits that paragraph 25 accurately sets forth the quoted language of Section 3.06 of the Act.

26. Section 9(a) of the Act, 415 ILCS 5/9(a) (1998), provides, in pertinent part, as follows:

No person shall

- a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

* * *

ANSWER: Murphy admits that paragraph 26 accurately sets forth the quoted language of Section 9(a) of the Act.

27. Section 501.402(c)(3) of the Board’s Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.402(c)(3) (1998), provides, in pertinent part, as follows:

Location of New Livestock Management Facilities and New Livestock Waste-Handling Facilities

- c) 3) Adequate odor control methods and technology shall be practiced by operators of new and existing livestock management facilities and livestock waste-handling facilities so as not to cause air pollution.

ANSWER: Murphy admits that paragraph 27 accurately sets forth the quoted language of 35 Ill. Admin. Code Section 501.402(c)(3).

28. On numerous occasions, beginning in January 1998 and continuing through the present, the Respondents have caused or allowed the emission of offensive hog odors from the facility. These odors have unreasonably interfered with the enjoyment of life and property by neighboring residents by preventing or disrupting outdoor activities and by invading or penetrating their homes and vehicles causing physical discomfort, including in some cases gagging, nauseousness, sore and/or burning nose and throat, and headache. Such physical discomfort has also included the physical and emotional revulsion an individual might experience when subjected to highly offensive odors.

ANSWER: Murphy denies each and every allegation in paragraph 28.

29. A neighbor who lives approximately 1/4 mile from the facility is asthmatic. Her doctor has written a letter indicating any further expansion of the Highlands confinement operation would cause the patient further discomfort. In the letter the doctor acknowledges that allergens such as substances that may be coming from the confinement trigger her extreme asthmatic reactions.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 and therefore denies each and every such allegation.

30. All of the neighbor complainants impacted by the offensive odors lived on their property prior to construction of the facility. A tornado struck the area on July 29, 1998. One of the complainant families did not rebuild their home at its former location because odors from the facility had so substantially interfered with the use and enjoyment of that property that the family decided to rebuild elsewhere. The family suffered a financial loss in choosing not to rebuild at the original location near the Highlands swine farm.

ANSWER: Murphy denies that odors from the Farm substantially interfered with any person's use and enjoyment of property. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 30 and therefore denies each and every such allegation.

31. Between the months of January 1998 and December 1998, the Illinois EPA received approximately 110 complaints of odor coming from the facility submitted by neighbors of the facility. The following indicates how many days per month neighbors experienced unreasonably offensive odors coming from the facility between the months of January 1998 and December 1998: January, 1 day; March, 3 days; April, 8 days; May, 11 days; June, 20 days; July, 11 days; August, 15 days; September, 14 days; October, 6 days; November, 9 days; December, 13 days. Collection and recording of the 1998 data was disrupted by the occurrence of and destruction caused by the tornado that moved through the area on July 29, 1998. Between the

months of January 1999 and November 1999, the Illinois EPA received approximately 120 complaints of odor coming from the facility submitted by neighbors of the facility. The following indicates how many days per month two complainants experienced unreasonably offensive odors from the facility between the months of January 1999 and November 1999: January, 3 days; February, 6 days; March, 4 days; April, 12 days; May, 10 days; June, 14 days; July, 15 days; August, 17 days; September, 13 days; October, 13 days; November, 14 days.

ANSWER: Murphy denies that unreasonably offensive odors emanated from the Farm. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 31 and therefore denies each and every such allegation.

32. The home of one of the complainants is located 1/4 mile from the facility. Other complainants homes are located approximately 1 mile from the facility. Despite regulatory setback requirements of at least 1/4 to 1/2 mile, research has shown that, on a case-by-case basis, separation distances greater than 1/2 mile, and in some cases up to 1 mile, are more appropriate for large livestock facilities. In certain instances, even a 1 mile separation distance is not sufficient.

ANSWER: Murphy admits that the home of two alleged complainants identified by the State of Illinois is located approximately one-quarter mile from the Farm, and that the homes of certain other alleged complainants identified by the State of Illinois are located approximately one mile from the Farm. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 32 and therefore denies each and every such allegation.

33. On September 4, 1996, the Illinois EPA sent a letter to Mr. Doug Lenhart, Director of Illinois Operations for Murphy Family Farms, in response to his inquiries regarding the siting of a new swine production facility near Elmwood, Illinois. The Illinois EPA cited the Title 35, Subtitle E setback provisions in the letter and included a statement that compliance with these siting provisions affords no protection from possible enforcement action if the livestock operation causes air pollution in violation of Section 9(a) of the Illinois Environmental Protection Act. The letter further stated that the description of the new facility provided by Mr. Lenhart indicated that a potential for possible odor problems does exist due to the magnitude of the operation and therefore careful consideration should be given to location, waste management and odor control methods.

ANSWER: Murphy admits that the Illinois EPA sent a letter dated September 4, 1996 to Doug Lenhart who was employed by Murphy. Further answering, Murphy states that the letter speaks for itself and denies each and every remaining allegation in paragraph 33.

34. On May 20, 1997, the Illinois EPA sent a letter to James Baird with regard to a new swine facility Mr. Baird planned on constructing near Williamsfield, which eventually was constructed as the Highlands and Murphy facility. The Illinois EPA cited the Title 35, Subtitle E setback provisions in the letter and included a statement that compliance with these siting provisions affords no protection from possible enforcement action if the livestock operation causes air pollution in violation of Section 9(a) of the Illinois Environmental Protection Act. The letter further stated that the description provided by Mr. Baird of the new facility indicated that a potential for possible odor problems does exist due to the magnitude of the operation and therefore careful consideration should be given to location, waste management and odor control methods. The May 20, 1997 letter further stated that the Illinois EPA had been involved with situations where offensive odors were reportedly detected two to three miles from swine production and/or waste handling facilities and, therefore, the Illinois EPA recommends locating larger livestock facilities at greater setback distances than the minimum distances.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 and therefore denies each and every such allegation.

35. On April 23, 1998, the Illinois EPA inspected the facility in response to livestock odor complaints from citizens who lived between 1/4 of a mile to 1 1/2 miles away from the facility.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 and therefore denies each and every such allegation.

36. At the time of the April 23, 1998 inspection, Douglas Baird confirmed that a strong swine waste odor had been produced during the start-up period for the facility's system. Mr. Baird informed the inspector that the start-up of the treatment system would not be completed until all lagoons in the multiple lagoon system reached their design operating level.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 and therefore denies each and every such allegation.

37. On April 23, 1998, the Illinois EPA inspector experienced a strong swine waste odor near the lagoon system during the inspection.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 and therefore denies each and every such allegation.

38. On May 29, 1998, the Illinois EPA issued a Noncompliance Advisory Letter to Highlands. The letter cited apparent violations of Section 9(a) of the Act, 415 ILCS 5/9(a), general prohibition against air pollution, and 35 III. Adm. Code 501.402(c)(3), failure to employ adequate odor control methods and technology.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 and therefore denies each and every such allegation.

39. On June 2, 1998, the facility was again inspected by the Illinois EPA. The inspector experienced a swine waste odor near the lagoon system and along a stream basin just downwind of the facility.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 and therefore denies each and every such allegation.

40. During the June 2, 1998 inspection, Douglas Baird again indicated that the odors would be addressed when the Bion biological treatment system was completed. On June 2, 1998, the majority of the components in the system had been installed and the system was operational. The multiple lagoons were very close to their design operating level and three of the four floating surface aerators planned for the system were installed. The floating baffle between the two components of the third lagoon was being installed at the time of the inspection.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 and therefore denies each and every such allegation.

41. In his report for the June 2, 1998 inspection, the Illinois EPA inspector indicated that the addition of the fourth aerator in the third lagoon may not prove sufficient to provide necessary odor control. The inspector also stated in his report that the first and second lagoon may have to be covered and the three influent line inlets into the first lagoon submerged to obtain further odor control. He also recommended that odors produced by the confinement building ventilation system be monitored.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 and therefore denies each and every such allegation.

42. On June 8, 1998, Douglas Baird sent a letter to the Illinois EPA in response to the noncompliance advisory letter. On June 17, 1998, the Illinois EPA responded to Mr. Baird's letter of June 8, 1998, and indicated that Mr. Baird's response did not sufficiently address the apparent violations because it failed to provide a timetable for completing action(s) necessary to eliminate offensive odor emissions.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 and therefore denies each and every such allegation.

43. On June 12, 1998, the Illinois EPA conducted another inspection of the facility in response to continuing odor complaints from neighbors of the facility. At the time of the inspection, approximately 3,650 sows were on site at the facility.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 and therefore denies each and every such allegation.

44. At the time of the June 12, 1998 inspection, the inspector experienced a very strong swine waste odor downwind of the facility at the Roy Kell residence, approximately 1/4 mile from the facility. The odor was present even though the Bion system was operational.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 and therefore denies each and every such allegation.

45. At the time of the June 12, 1998 inspection, Roy Kell indicated the odor was present most of the time at his home, since his home is located just east of the facility and the prevailing winds are out of the southwest.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 and therefore denies each and every such allegation.

46. On June 17, 1998, the Illinois EPA conducted another inspection of the facility. At the time of the inspection, approximately 3,650 sows were on site at the facility.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 and therefore denies each and every such allegation.

47. During the June 17, 1998 inspection, the inspector experienced swine waste odor approximately 1 1/4 mile downwind north of the facility along County Highway 11 (1200N). At the time this odor was experienced, the facility's Bion system was operational.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 and therefore denies each and every such allegation.

48. During the June 17, 1998 inspection, the inspector experienced a strong odor on the site of the facility around the confinement buildings and the waste treatment system.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 and therefore denies each and every such allegation.

49. On June 25, 1998, the Illinois EPA conducted another inspection of the facility in response to continuing odor complaints from neighbors of the facility. At about 2:00 P.M. on the date of this inspection, the inspector experienced a strong and offensive swine facility odor while on County Highway 11 (1200 N) near Township Road 2200E. The wind was out of the south-southwest at that time. The said location is approximately 1 1/4 mile northeast of the facility.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 and therefore denies each and every such allegation.

50. At approximately 2:30 P.M. on June 25, 1998, the inspector returned to the same location where he experienced strong swine facility odor at 2:00 P.M. on that date. He again experienced a strong and offensive swine facility odor at the location. A distinct odor was present in a relatively narrow band a few hundred yards wide along County Highway 11 near Township Road 2200E. The facility was determined to be the source of the offensive swine facility odors at the said location at 2:00 P.M. and 2:30 P.M.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 and therefore denies each and every such allegation.

51. At the time of the inspection on June 25, 1998, no swine facility odor was detected while on the upwind side of the facility.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 and therefore denies each and every such allegation.

52. On July 14, 1998, the Illinois EPA sent Highlands and Murphy a Violation Notice pursuant to Section 31(a)(1) of the Act, 415 ILCS 5/31(a)(1). The notice cited apparent violations of Section 9(a) of the Act, 415 ILCS 5/9(a), and 35 III. Adm. Code 501.402(c)(3).

ANSWER: Murphy admits the allegations in paragraph 52.

53. On July 29, 1999 [sic], Respondent Murphy sent the Illinois EPA a letter in response to the July 14, 1998 Violation Notice denying ownership in or management responsibility for the facility.

ANSWER: Murphy admits that it sent a letter dated July 29, 1998 to Illinois EPA. Further answering, Murphy states that the letter speaks for itself and denies each and every remaining allegation in paragraph 53.

54. On August 28, 1998, the Illinois EPA rejected Respondents Murphy's response dated July 29, 1999 as an acceptable Compliance Commitment Agreement ("CCA") on the basis that the response failed to commit to any corrective actions to address the odor violations.

ANSWER: Murphy admits that it received a letter dated August 28, 1998 from the Illinois EPA. Further answering, Murphy states that the letter speaks for itself and denies each and every remaining allegation in paragraph 54.

55. On September 4, 1998, Respondent Murphy, by its counsel, Reef C. Ivey II, representing Murphy Family Farms of North Carolina, addressed a letter to the Illinois EPA wherein it was stated that Murphy's response of July 29, 1998 was not a proposed CCA, and that Murphy could not have violated any statutes or regulations in Illinois because it did not own or operate a swine confinement facility in Illinois. The letter further stated that although Murphy believed it unnecessary for it to appear at a meeting with the Illinois EPA, it was requesting the opportunity for its representative to attend a scheduled meeting between Highlands and the Illinois EPA.

ANSWER: Murphy admits that its counsel sent a letter dated September 4, 1998 to Illinois EPA. Further answering, Murphy states that the letter speaks for itself and denies each and every remaining allegation in paragraph 55.

56. On September 11, 1998, the Illinois EPA met with Highlands and Murphy pursuant to the requirements of Section 31(a) of the Act, 415 ILCS 5/31(a). A representative of Bion also attended the meeting.

ANSWER: Murphy admits that Highlands, Murphy, and Bion met with representatives of the Illinois EPA on September 11, 1998. Further answering, Murphy lacks

knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 and therefore denies each and every such allegation.

57. On October 1, 1998, the Illinois EPA received a letter dated September 30, 1998, from Highlands that contained a proposed CCA. In its September 30, 1998 letter, Respondent Highlands represented that the Bion system fully "came on line" June 29, 1998 and would require additional time to maximize its efficiency.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 and therefore denies each and every such allegation.

58. On October 28, 1998, the Illinois EPA rejected Respondent Murphy's October 1, 1998 response on the basis that it did not provide any additional information for reconsideration.

ANSWER: Murphy admits that it received a letter dated October 28, 1998 from the Illinois EPA. Further answering, Murphy states that the letter speaks for itself and denies each and every remaining allegation in paragraph 58.

59. On October 28, 1998, the Illinois EPA rejected Respondent Highlands' proposed CCA on the basis that scheduled and proposed odor control measures appeared to be inadequate to remedy the odor problem. Further, the Illinois EPA indicated that even though additional odor control measures may be identified as a result of a scheduled on-site evaluation by manure/nutrient management consultant Leonard Meador, the CCA failed to provide any specifics as to what and when additional odor control measures would be implemented as a result of the evaluation.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59 and therefore denies each and every such allegation.

60. On November 30, 1998, the Illinois EPA received a letter dated November 25, 1998 from Respondent Highlands that included implementation schedules for odor control measures recommended as the result of the on-site evaluation performed by Leonard Meador, with a request that the said schedules would be considered as a newly proposed CCA.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 and therefore denies each and every such allegation.

61. On December 22, 1998, the Illinois EPA conducted another inspection of the facility. During the inspection wastewater samples were collected from six locations in the lagoon system and the general condition of each lagoon was observed. Dissolved oxygen measurements and temperature readings were taken from each of the four lagoons. The sample results indicated that the first three lagoons of the system were in an anaerobic state.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61 and therefore denies each and every such allegation.

62. At the time of the December 22, 1998 inspection, the inspector observed that at an inlet pipe to the first cell which directs swine waste from the breeding/farrowing buildings, the pipe was discharging a dark colored, turbid liquid with a very strong swine waste odor. At the time of the sampling, Douglas Baird indicated that pressure washing was occurring in the farrowing unit and therefore the sample collected was not necessarily representative of the normally concentrated wastewater.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 62 and therefore denies each and every such allegation.

63. At the time of the December 22, 1998 inspection, the first lagoon of the system contained turbid liquid that had a very strong swine waste odor. A 2-inch frozen manure crust existed over the surface of the lagoon except in the vicinity of the two surface aerators and the inlet pipes. Laboratory analysis of a sample taken from the first lagoon in the system indicated 2430 milligrams per liter ("mg/l") biochemical oxygen demand ("BOD") and 712 mg/l ammonia.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63 and therefore denies each and every such allegation.

64. At the time of the December 22, 1998 inspection, the second lagoon in the system contained wastewater that was very turbid and had a distinct reddish color and a very strong swine waste odor. Laboratory data from a sample taken in the second lagoon revealed a BOD level of 1,090 mg/l and 484 mg/l ammonia-nitrogen.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 and therefore denies each and every such allegation.

65. At the time of the December 22, 1998 inspection, the first cell of the third lagoon contained wastewater that was very turbid, had a reddish color and had a very strong swine waste odor.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 and therefore denies each and every such allegation.

66. At the time of the December 22, 1998 inspection, wastewater in the second cell of the third lagoon was very turbid, reddish in color and had a very strong swine waste odor.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 66 and therefore denies each and every such allegation.

67. It is the wastewater from the third lagoon, which on the date of the December 22, 1998 inspection had a very strong swine waste odor, that is recycled back to the confinement buildings as flush water.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 and therefore denies each and every such allegation.

68. At the time of the December 22, 1998 inspection, the fourth lagoon contained a 2-inch thick ice cover. Liquid in the fourth lagoon was turbid with a strong swine waste odor.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68 and therefore denies each and every such allegation.

69. At the time of the December 22, 1998 inspection, the inspector experienced swine waste odors at the lagoons and he experienced a strong swine odor immediately east of the swine confinement buildings. Weather conditions on this date were very cold with a temperature of about 5 degrees Fahrenheit and wind out of the west.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 69 and therefore denies each and every such allegation.

70. On January 12, 1999, the Illinois EPA issued Respondent Highlands and Respondent Murphy a Notice of Intent to Pursue Legal Action, pursuant to Section 31(b) of the Act, 415 ILCS 5/31(b).

ANSWER: Murphy admits the allegations in paragraph 70.

71. On February 4, 1999, a meeting was held pursuant to the requirements of Section 31(b). Representatives of Highlands, Murphy and Bion Technologies, Inc. attended the meeting.

ANSWER: Murphy admits that Murphy, Highlands, and Bion attended a meeting with representatives of the Illinois EPA on February 4, 1999. Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 71 and therefore denies each and every such allegation.

72. On February 22, 1999, the Illinois EPA received a letter from Mr. Ivey representing Murphy Family Farms of North Carolina dated February 17, 1999, that again indicated that Murphy did not own or operate a swine confinement facility in the State of Illinois, and claiming that the State of Illinois did not have jurisdiction over Murphy in this matter.

ANSWER: Murphy admits that its counsel sent a letter dated February 17, 1999 to the Illinois EPA. Further answering, Murphy states that the letter speaks for itself and denies each and every remaining allegation in paragraph 72.

73. On February 22, 1999, the Illinois EPA received a letter from Respondent Highlands dated February 19, 1999, stating that the Highlands was continuing to investigate and consider every technically feasible and economically reasonable measure to reduce odors at the facility. The Highlands' letter also called into question the validity of the neighbors' complaints.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 73 and therefore denies each and every such allegation.

74. On July 30, 1999, at the invitation of the facility, the Illinois EPA performed a site inspection of the facility. During the inspection, wastewater samples were collected from six locations in the lagoon system and the general condition of each cell was observed. Wastewater samples were split with the Respondents.

ANSWER: Murphy admits that representatives of the Illinois EPA conducted an inspection of the Farm on July 30, 1999, and that those representatives collected samples and split those samples with Respondent Highlands. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 74 and therefore denies each and every such allegation.

75. A strong waste odor was experienced at each lagoon. A strong ammonia odor was experienced emanating from the lagoon system. At the time of the July 30, 1999 inspection, the first three lagoons in the system were anaerobic.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 75 and therefore denies each and every such allegation.

76. At the time of the July 30, 1999 site inspection, offensive swine farm and swine waste lagoon odors were experienced downwind of the facility along the east-west road immediately north of the facility and along Township Road 2200 East (the north-south gravel road immediately northeast of the facility) (Elba Township). Township Road 2200 is the road in front of the Kell residence.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 76 and therefore denies each and every such allegation.

77. During the July 30, 1999 site inspection, odors were detected within and around the confinement buildings and downwind of the lagoons. The odors were of sufficiently similar character to those smelled along Township Road 2200 East to establish that the facility is the source of the observed offensive odors. Weather conditions on that date, July 30, 1999, were very hot and humid with a temperature of approximately 95 degrees Fahrenheit. A gentle, variable wind was coming out of the west and southwest.

ANSWER: Murphy admits that the temperature at the time of the inspection on July 30, 1999 was approximately 95 degrees Fahrenheit. Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 77 and therefore denies each and every such allegation.

78. During the July 30, 1999 site inspection, the waste treatment system was in operation and all of the lagoons were filled to operating level. The mechanical surface aerators were in operation in the various lagoons. Wastewater from the fourth lagoon was being applied to cropland west of the swine facility via a traveling gun irrigation unit.

ANSWER: Murphy admits that during the July 30, 1999 inspection, the lagoons were filled to operating level, the aerators were operating, and Highlands was land-applying waste from the fourth cell of the waste treatment system using a traveling gun irrigation unit. Murphy

lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 78 and therefore denies each and every such allegation.

79. There had been a recent electrical storm in the area prior to the July 30, 1999 site inspection, during which time the power failed at the facility. Representatives of Respondent Highlands indicated that due to the power failure, the aerators had worked only 8 of the past 36 hours. Respondent Highlands claimed that the odor was more intense that day due to the power failure. Upon information and belief, the swine facility had no backup power source for the aerators.

ANSWER: Murphy admits the allegations in paragraph 79.

80. The facility is a continuous source of offensive odors both from the confinement buildings and the Bion system. These two odor sources are related to the Respondents' choice and design of the buildings and waste treatment system.

ANSWER: Murphy denies each and every allegation in paragraph 80.

81. Alternate waste treatment facility designs were available at the time of construction of the facility that are capable of preventing the release of odors to the extent noted during the July 30, 1999 site inspection.

ANSWER: Murphy denies each and every allegation in paragraph 81.

82. Even though the facility met the minimum setback requirements, the facility was constructed with inadequate separation from the residence approximately one quarter mile to the east. It is unlikely that, for the number of hogs (3,650 sows) in this facility, the application of conventional waste management practices will prevent the residents living one quarter mile east of the facility from experiencing odors at an intensity and frequency that interfere with the enjoyment of their home.

ANSWER: Murphy admits that the Farm met the applicable setback requirements, but denies each and every remaining allegation in paragraph 82.

83. Among the alternatives to reduce the odor intensity from the existing facility are the following: provide a cover for the first two lagoons of the existing lagoon system to prevent the escape of odorous gases and provide sufficient aeration to avoid anaerobic conditions in the third and fourth lagoons; capture and flare (and/or utilize) gas from the entire waste management system; provide a cover for the first three lagoons and provide sufficient aeration to maintain the fourth lagoon in an aerobic condition; replace the first lagoon of the existing lagoon system with an enclosed, temperature controlled anaerobic digester and provide sufficient aeration to the second and subsequent lagoons to maintain aerobic conditions; replace all three of the first

lagoons with an enclosed, temperature controlled anaerobic digester and maintain the fourth lagoon in an aerobic state; provide for twice weekly draining of the underfloor manure storage pits and re-filling with odor free water with a dissolved oxygen concentration in excess of 2.0 mg/l; provide adequate filtration for exhaust air generated at the swine confinement buildings; reduce organic loading on the treatment system by reducing the population of hogs in the facility.

ANSWER: Murphy denies each and every allegation in paragraph 83.

84. The Illinois EPA continues, to this date, to receive complaints from neighbors of the facility of offensive odors emanating from the facility that are causing unreasonable interference with the use and enjoyment of property.

ANSWER: Murphy denies that offensive odors emanate from the facility which cause unreasonable interference with the use and enjoyment of property. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 84 and therefore denies each and every such allegation.

85. By causing or allowing strong, persistent and offensive hog odors to emanate from the facility that unreasonably interfere with the use and enjoyment of the neighbors' property, Respondents Highlands and Murphy have caused air pollution, thereby violating Section 9(a) of the Act, 415 ILCS 5/9(a)(1998).

ANSWER: Murphy denies each and every allegation in paragraph 85.

86. By failing to practice adequate odor control methods and technology at its new livestock management facility and livestock waste-handling facility, thereby causing air pollution, Respondents Highlands and Murphy have violated 35 III. Adm. Code 501.402(c)(3)(1998).

ANSWER: Murphy denies each and every allegation in paragraph 86.

WHEREFORE, Murphy respectfully requests that the Board enter judgment in Murphy's favor and against Complainant, that it enter an order dismissing Count I of Complainant's Second Amended Complaint with prejudice, and that it grant such other and further relief as the Board deems just and proper.

COUNT II

WATER POLLUTION VIOLATIONS

1. This Count is brought on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, the Attorney General of the State of Illinois, on her own motion pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), (e) (2000).

ANSWER: Murphy admits that Count II is brought by the Attorney General of the State of Illinois on behalf of the People of the State of Illinois pursuant to Sections 42(d) and (e) of the Act. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 1 and therefore denies each and every such allegation.

2-7. Complainant realleges and incorporates by reference herein paragraphs 4 through 8 and paragraph 10 of Count I as paragraphs 2 through 7 of this Count II.

ANSWER: Murphy restates and incorporates by this reference as though fully set forth herein its answers to paragraphs 4 through 10 of Count I as its answers to paragraphs 2 through 7 of Count II.

8. The livestock waste management system utilized at the facility, prior to December 21, 1999, was a multiple lagoon system designed and, upon information and belief, operated by Bion Technologies, Inc. ("Bion"), a Colorado corporation. Swine waste and wastewater generated in the buildings is collected in 16-inch deep pits under the buildings. The building pits are drained into the lagoon system. There were four lagoons in the system that were operated in series. The third lagoon was divided into two cells by a synthetic curtain partition. Some of the swine wastewater from the first cell of the third lagoon is recycled to the buildings as pit recharge water. Wastewater in the third and fourth lagoon was land applied via a traveling gun irrigation unit. Swine waste solid sludge that accumulated in the second lagoon was to be periodically land applied.

ANSWER: Murphy admits that prior to December 21, 1999, (1) a multiple-lagoon waste management system designed by Bion was in use at the Farm, (2) waste was collected in 16-inch deep pits under certain of the buildings that housed hogs at the Farm, (3) the pits were

drained into the lagoon system, and (4) the design of the waste treatment system called for certain waste to be land-applied. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 12 and therefore denies each and every such allegation.

9. Shortly after the filing of the original Complaint in this matter, Bion withdrew from its contractual obligations at the Highlands' facility.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 and therefore denies each and every such allegation.

10. In April 2000, Respondents began to convert the Highland facility's lagoon system to a BioSun system. The BioSun system utilizes the two large lagoons of the original lagoon series. The two small lagoons that served as the entry point for the waste stream in the Bion system, were taken out of operation but have never been cleaned out and properly closed.

ANSWER: Murphy admits that during 2000, Highlands began using waste treatment technology provided by BioSun, and that Highlands re-configured its waste treatment system at that time such that only two lagoons are used for waste treatment. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 10 and therefore denies each and every such allegation.

11. Wastewater in the second and final lagoon is land applied via a traveling gun irrigation unit.

ANSWER: Murphy admits that the design of the waste treatment system that utilized waste treatment technology provided by BioSun called for land application of certain waste. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 and therefore denies each and every such allegation.

12. Section 3.55 of the Act, 415 ILCS 5/3.55 (2000), provides:

“WATER POLLUTION” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

ANSWER: Murphy admits that paragraph 12 accurately sets forth the quoted language of Section 3.55 of the Act.

13. Section 3.56 of the Act, 415 ILCS 5/3.56 (2000), provides:

“WATERS” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

ANSWER: Murphy admits that paragraph 13 accurately sets forth the quoted language of Section 3.56 of the Act.

14. Section 3.06 of the Act, 415 ILCS 5/3.06 (2000), provides:

“CONTAMINANT” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

ANSWER: Murphy admits that paragraph 14 accurately sets forth the quoted language of Section 3.06 of the Act.

15. Section 12(a), (d) and (f) of the Act, 415 ILCS 5/12(a), (b), (f) (2000), provides, in pertinent part:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act;

* * *

- d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard;

* * *

- f. Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the state, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

ANSWER: Murphy admits that paragraph 15 accurately sets forth the quoted language of Sections 12(a), (d), and (f) of the Act.

16. Section 302.203 of the Illinois Pollution Control Board's ("Board") water pollution regulations, 35 Ill. Adm. Code 302.203, provides:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin.

ANSWER: Murphy admits that paragraph 16 accurately sets forth the quoted language of 35 Ill. Admin. Code Section 302.203.

17. Section 302.212(a) and (b) of the Board's water pollution regulations, 35 Ill. Adm. Code 302.212(a) and (b), provide, in pertinent part:

- a) Total ammonia nitrogen (as N:STORET Number 00610) shall in no case exceed 15 mg/L.
- b) Un-ionized ammonia nitrogen (as N:STORET Number 00612) shall not exceed the acute and chronic standards given below subject to the provisions of Section 302.208(a) and (b), and Section 302.213 of this Part.
 - 1) From April through October, the Acute Standard (AS) shall be 0.33 mg/L and the Chronic Standard (CS) shall be 0.057 mg/L.
 - 2) From November through March, the AS shall be 0.14 mg/L and the CS shall be 0.025 mg/L.

ANSWER: Murphy admits that paragraph 17 accurately sets forth the quoted language of 35 Ill. Admin. Code Sections 302.212(a) and (b).

18. Section 501.405(a) of the Subtitle E: Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.405 (a), provides, in pertinent part, as follows:

Section 501.405. Field Application of Livestock Waste

- a) The quantity of livestock waste applied on soils shall not exceed a practical limit as determined by soil type, especially its permeability, the condition (frozen or unfrozen) of the soil, the percent slope of the land, cover mulch, proximity to surface waters and likelihood of reaching groundwater, and other relevant considerations. These livestock waste application guidelines will be adopted pursuant to Section 502.305, unless otherwise provided for by Board regulations.

* * *

ANSWER: Murphy admits that paragraph 18 accurately sets forth the quoted language of 35 Ill. Admin. Code Section 501.405(a).

19. Section 580.105 of the Subtitle E: Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 580.105, provides, in pertinent part, as follows:

Method of Reporting a Release of Livestock Waste

- a) An owner or operator of a livestock waste lagoon shall report any release of livestock waste from the livestock waste handling facility or from the transport of livestock waste by means of transportation equipment within 24 hours after the discovery of the release. Reports of releases to surface waters, including to sinkholes, drain inlets, broken subsurface drains or other conduits to groundwater or surface waters, shall be made upon discovery of the release, except when such immediate notification will impede the owner's or operator's response to correct the cause of the release or to contain the livestock waste, in which case the report shall be made as soon as possible but no later than 24 hours after discovery.

ANSWER: Murphy admits that paragraph 19 accurately sets forth the quoted language of 35 Ill. Admin. Code Section 580.105.

20. On June 19, 2002, Respondents Highlands and Murphy reported a release of livestock waste to the Illinois Emergency Management Agency ("IEMA"). The Highlands reported that the release occurred on June 18, 2002. The release resulted from the land application of waste from the facility.

ANSWER: Murphy denies that it reported a release of livestock waste to IEMA at any time. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 20 and therefore denies each and every such allegation.

21. The waste discharged to an unnamed tributary of French Creek. The waste entered the unnamed tributary at the outlet of two field tiles south of Interstate Highway 1-74. One tile comes from the west and the other comes from the north. At approximately 2:00 P.M. on June 18, 2002, a neighbor of the Highlands facility observed that the discharge from the west tile was clear, and the discharge from the northerly tile was flowing red. The unnamed tributary was flowing red.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 and therefore denies each and every such allegation.

22. Respondents Highlands and Murphy were land applying waste from the facility via a traveling gun irrigation unit on June 18, 2002. The waste was being applied to a portion of a soybean field on the west side of the facility's lagoons. The entire soybean field is a half mile long by a quarter mile wide and consists of 79 acres. The operator of Respondents' facility told inspectors that he began spray irrigating at approximately 8:00 A.M. on the morning of June 18, 2002, in the soybean field, and shut off the tractor/pump irrigation unit at about 1:00 P.M. that day. During the irrigation, he observed the irrigation gun had not traveled as far as it normally would through the spray field.

ANSWER: Murphy denies that it land-applied waste from the Farm at any time, and that the Farm is Murphy's. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 and therefore denies each and every such allegation.

23. Upon notification of the release on June 19, 2002, the Illinois EPA investigated the release site. At the time of the inspection, the Illinois EPA inspectors observed that it was apparent that wastewater was recently spray irrigated on the southeast portion of the soybean field. Dry field conditions were observed except in the irrigation area where wet, muddy field conditions existed. Aluminum irrigation pipe extended westward from the Respondents' lagoons and into the field. The piping extended to a hose reel and traveling gun irrigation unit located in the field. Puddles of red-colored lagoon wastewater were observed in the field.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 and therefore denies each and every such allegation.

24. At the time of the June 19, 2002, inspection, inspectors observed that an eroded, wet channel existed in the soybean field and extended south in the cornfield where the inspectors observed field conditions that indicated that surface runoff had recently flowed. The surface of the cornfield was dry except in the eroded channel/waterway area. The channel extended south to the southern edge of the cornfield where Interstate 74 borders the field. At this location the wetted area fanned out and the wastewater entered a buried field tile and flowed under Interstate 74. An outlet was observed on the south side of Interstate 74 at a location south and east of the channel in the cornfield. On the south side of the Interstate, the inspectors observed that dead earthworms were prevalent in the small receiving stream. From this location, direction of flow is south. The Illinois EPA inspectors observed numerous dead small fish in the receiving stream.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 and therefore denies each and every such allegation.

25. In the course of the investigation, the Illinois EPA inspectors were informed by the operator of the Highlands facility that no actions were taken to pump out, barricade or otherwise stop the release once the facility became aware of the release which was at approximately 4:45 P.M. on July 18, 2002. The release was not reported to IEMA until approximately 9:15 A.M. on June 19, 2002. The owner and operator of the Highlands reported the waste had dissipated and there was nothing to contain. The Illinois EPA received notification from IEMA at approximately 9:55 A.M. on June 19, 2002. Upon arrival at the release site, Illinois EPA inspectors recognized that the unnamed tributary had suffered a fish kill and they immediately contacted the Illinois Department of Natural Resource ("Illinois DNR") to conduct a fish kill investigation.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 and therefore denies each and every such allegation.

26. An Illinois DNR fisheries biologist conducted a fish kill investigation on July 19, 2002. The biologist estimated that approximately 6,600 fish were killed by the release. The species killed included seven minnow species, two species of darter and green sunfish. The biologist observed that the liquid swine manure spill was sufficient in quantity to kill all fish and crayfish in the 1.54 mile length of the tributary and that the dead fish observed at the five count stations were killed in an estimated time period of 6 to 24 hours prior to his investigation.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 and therefore denies each and every such allegation.

27. At the time of the July 19, 2002, inspection, and during subsequent inspections on July 24 and July 25, 2002, stream samples were collected at various locations at the site of the discharge, and along the receiving waters. Samples collected at the time of the July 19, 2002, inspection indicated total ammonia levels of 17 mg/L and 20 mg/L at locations downstream of the release in the unnamed tributary to French Creek. Temperature and pH measurements indicate the existence of conditions that would result in exceedance of the acute standard for unionized ammonia.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 and therefore denies each and every such allegation.

28. By failing to follow the Illinois EPA rules which require immediate reporting of releases to surface waters, set forth as 35 III. Adm. Code 580.105, the Respondents failed to exercise proper due diligence in mitigating this release. Early notification may have allowed the Illinois EPA to investigate the release a day earlier which, in turn, may have allowed for implementation of corrective action to minimize the impact of the release.

ANSWER: Murphy denies each and every allegation in paragraph 28.

29. By causing or allowing the discharge of livestock waste to the unnamed tributary of French Creek so as to cause or tend to cause water pollution, Respondents Highlands and Murphy have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2000), and 35 III. Adm. Code 302.203.

ANSWER: Murphy denies each and every allegation in paragraph 29.

30. By causing or allowing the discharge of livestock waste to the unnamed tributary of French Creek so as to cause total ammonia levels to exceed 15 mg/L and unionized ammonia nitrogen levels to exceed the acute standard of 0.33 mg/L, Respondents Highlands and Murphy have violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2000), and 35 III. Adm. Code 302.212(a) and (b).

ANSWER: Murphy denies each and every allegation in paragraph 30.

31. By causing or allowing the deposit of livestock waste upon the land in such place and manner so as to create a water pollution hazard, Respondents Highlands and Murphy have violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2000), and 35 III. Adm. Code 501.405(a).

ANSWER: Murphy denies each and every allegation in paragraph 31.

32. By causing, threatening or allowing the discharge of a contaminant into the waters of the State without an NPDES permit, Respondent Highlands and Murphy have violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2000).

ANSWER: Murphy denies each and every allegation in paragraph 32.

WHEREFORE, Murphy respectfully requests that the Board enter judgment in Murphy's favor and against Complainant, that it enter an order dismissing Count II of Complainant's Second Amended Complaint with prejudice, and that it grant such other and further relief as the Board deems just and proper.

COUNT III

WATER POLLUTION VIOLATIONS

1. This Count is brought against Respondent The Highlands LLC on behalf of the People of the State of Illinois, *ex rel.* Lisa Madigan, the Attorney General of the State of Illinois, on her own motion pursuant to Sections 42(d) and (e) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(d), (e) (2002).

ANSWER: Murphy admits that Count III is brought by the Attorney General of the State of Illinois on behalf of the People of the State of Illinois pursuant to Sections 42(d) and (e) of the Act. Further answering, Murphy lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 1 and therefore denies each and every such allegation.

2-7. Complainant realleges and incorporates by reference herein paragraphs 4 through 8 and paragraph 10 of Count I as paragraphs 2 through 7 of this Count III.

ANSWER: Murphy restates and incorporates by this reference as though fully set forth herein its answers to paragraphs 4 through 8 and paragraph 10 of Count I as its answers to paragraphs 2 through 7 of Count III.

8-16. Complainant realleges and incorporates by reference herein paragraphs 8 through 15 and paragraph 18 of Count II as paragraphs 8 through 16 of this Count III.

ANSWER: Murphy restates and incorporates by this reference as though fully set forth herein its answers to paragraphs 8 through 15 and paragraph 18 of Count II as its answers to paragraphs 8 through 16 of Count III.

17. Section 560.207 of the Subtitle E: Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 560.207, provides, in pertinent part, as follows:

Rainfall

...Judgment should be used in planning waste applications in conjunction with weather patterns.

ANSWER: Murphy admits that paragraph 17 accurately sets forth the quoted language of 35 Ill. Admin. Code Section 560.207.

18. On November 18, 2003, an Illinois EPA inspector observed livestock waste application equipment in Respondent Highlands' irrigation field immediately west of Respondent Highlands' swine waste lagoons. At the time of the observation, a traveling gun irrigation unit was set up in the agriculture field immediately west of the swine waste lagoons. Field conditions were wet and muddy. A 6-inch diameter aluminum pipe (supply line) extended west from the lagoons for a distance of several hundred feet. The pipe then turned south and extended to the irrigation reel and gun. The traveling gun was positioned at the reel and had traveled from east to west. It was not operating at the time of the Illinois EPA field visit.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 and therefore denies each and every such allegation.

19. Land application (irrigation) of swine wastewater had occurred from the Highlands swine waste lagoons to Respondent Highlands' irrigation field on November 17, 2003. The irrigation of wastewater that occurred on November 17, 2003 occurred at a time when the weather forecast included a prediction of rain.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 and therefore denies each and every such allegation.

20. At the time of the November 18, 2003 field visit, a significant leak was observed along the 6-inch diameter aluminum pipe. The leak resulted in ponding of swine wastewater on the surface of the field north of the aluminum irrigation pipe. The accumulation of wastewater created a barren area in the field. A leak was also observed at the 90 degree elbow at the west

end of the aluminum irrigation pipe. At the point of the leak at the 90 degree elbow, a significant hole was eroded in the field beneath the elbow.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 and therefore denies each and every such allegation.

21. On October 30, 2003, the Illinois EPA conducted a site visit at the Highlands' facility. At the time of the October 30, 2003 site visit, a leak in the wastewater irrigation system was observed by an Illinois EPA inspector during land application of swine manure. At the time of the October 30, 2003 inspection, the inspector observed ponding of wastewater in the application field at the location of the leak near the hose reel.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 and therefore denies each and every such allegation.

22. At the time of the November 18, 2003 site visit, the Illinois EPA inspector observed a reddish colored discharge with foam coming from an 8-inch diameter PVC pipe at a concrete drop box structure located about 3/8 of a mile northeast of the swine farm. Depth of flow in the PVC pipe was about 2 inches. The discharge from the PVC pipe drains east beneath a road and enters an unnamed tributary to French Creek. The PVC pipe discharges from a field tile that, per Respondent Highlands, is connected to a field tile that runs on the south side of Township Road 1100 N immediately in front of the swine facility. This field tile is located in proximity to where wastewater was ponded at the time of the November 18, 2003 site visit due to the leak in the irrigation equipment.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 and therefore denies each and every such allegation.

23. At the time of the November 18, 2003 site visit, the Illinois EPA inspector took samples of the wastewater ponded on the irrigation field at the location of the leak in the 6-inch wastewater supply line, and he also took samples of the discharge from the 8-inch PVC pipe at the concrete drop box structure located 3/8 of a mile northeast of the swine farm. Sample results from the ponded wastewater at the location of the leak in the 6-inch supply line indicated the following parameter levels: 31 mg/L ammonia, 60 mg/L BOD, and 592 mg/L total suspended solids. Sample results from the discharge at the concrete drop box indicated the following parameter levels; 1.5 mg/L ammonia, 11 mg/L BOD, 19 mg/L total suspended solids and 3000 fecal coliform/100 ml.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 and therefore denies each and every such allegation.

24. The pooling of wastewater or the excessive land application of wastewater results in accumulations that cannot be adequately absorbed by soils. As a result, the wastewater penetrates to field tiles and may exist in the field tiles at contaminant levels high enough to cause or tend to cause water pollution at points of discharge.

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 and therefore denies each and every such allegation.

25. By causing or allowing the ponding and accumulation of livestock waste upon the land so as to cause or tend to cause water pollution, Respondents [*sic*] Highlands has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 and therefore denies each and every such allegation.

26. By causing or allowing the ponding and accumulation of livestock waste in its irrigation field, Respondent Highlands has violated 35 III. Adm. Code 501.405(a).

ANSWER: Murphy lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 and therefore denies each and every such allegation.

FIRST AFFIRMATIVE DEFENSE

The Complaint must be dismissed because Complainant's claims against Murphy are barred by the doctrine of laches.

SECOND AFFIRMATIVE DEFENSE

The Complaint must be dismissed to the extent that Complainant's claims against Murphy are barred by applicable statutes of limitation or other applicable limitations periods.

THIRD AFFIRMATIVE DEFENSE

The Complaint must be dismissed because the Act, as applied to alleged odor violations, is unconstitutionally vague in that it does not provide adequate notice of the conduct required to

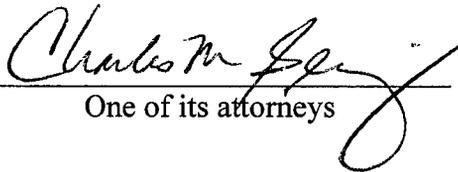
comply with the Act and that certain factors affecting the propagation of odors are variable and cannot reasonably be controlled.

WHEREFORE, Murphy respectfully requests that the Board enter judgment in Murphy's favor and against Complainant, that it enter an order dismissing Complainant's Second Amended Complaint with prejudice, and that it grant such other and further relief as the Board deems just and proper.

Dated: June 7, 2005

Respectfully submitted,

MURPHY FARMS, INC.

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