



**RECEIVED**  
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JAN 22 2007

STATE OF ILLINOIS  
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

January 19, 2007

The Honorable Dorothy Gunn  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. Pinnacle Genetics, LLC, et al.***  
**PCB No. 07-29**

Dear Clerk Gunn:

Enclosed for filing please find the original and one copy of a Notice of Filing, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jane E. McBride", with a stylized flourish at the end.

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

JEM/pp  
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JAN 22 2007

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
PINNACLE GENETICS, LLC, an Illinois )  
limited liability corporation, and )  
PROFESSIONAL SWINE MANAGEMENT, )  
LLC, an Illinois limited liability corporation, )  
)  
Respondent. )

PCB No. 07-29  
(Enforcement)

NOTICE OF FLING

To: Doug Groth, DVM  
Professional Swine Management, LLC  
P.O. Box 220  
Carthage, IL 62321

K.T. Wright, DVM  
Pinnacle Genetics, LLC  
Blandinsville Veterinary Clinic  
R.R. 1  
Blandinsville, IL 61420

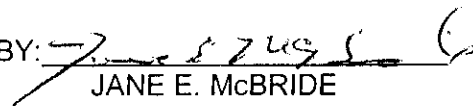
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY:   
JANE E. McBRIDE  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: January 19, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that I did on January 19, 2007, 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, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

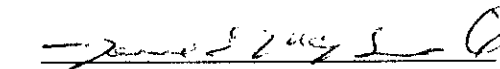
To: Doug Groth, DVM Professional Swine Management, LLC P.O. Box 220 Carthage, IL 62321	K.T. Wright, DVM Pinnacle Genetics, LLC Blandinsville Veterinary Clinic R.R. 1 Blandinsville, IL 61420
---	--

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  
James R. Thompson 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:

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, IL 62794

  
JANE E. McBRIDE  
Assistant Attorney General

This filing is submitted on recycled paper.

JAN 22 2007

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 PINNACLE GENETICS, LLC, an Illinois )  
 limited liability corporation, and )  
 PROFESSIONAL SWINE MANAGEMENT, )  
 LLC, an Illinois limited liability corporation, )  
 )  
 Respondent. )

PCB No. 07-29  
(Enforcement)

**MOTION FOR RELIEF FROM HEARING REQUIREMENT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2004), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2004). In support of this motion, Complainant states as follows:

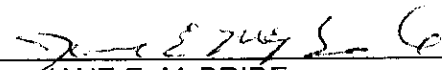
1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2004).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

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

BY:   
JANE E. McBRIDE  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: January 19, 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JAN 22 2007

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF  
ILLINOIS,

Complainant,

v.

PINNACLE GENETICS, LLC, an Illinois  
limited liability corporation, and  
PROFESSIONAL SWINE MANAGEMENT,  
LLC, an Illinois limited liability corporation

Respondents

PCB NO. 07-29  
(Enforcement)

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent Pinnacle Genetics, LLC and Respondent Professional Swine Management, LLC, have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondents agree to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

**I. JURISDICTION**

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2004).

**II. AUTHORIZATION**

The undersigned representatives for each party certify that they are fully authorized by

the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

### **III. STATEMENT OF FACTS**

#### **A. Parties**

1. On October 24, 2006, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2004), against the Respondents.

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

3. At all times relevant to the Complaint, Respondent Pinnacle Genetics, LLC ("Pinnacle") was and is an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Pinnacle is Gary L. Donley, 106 E. State Street, PO Box 467, Camp Point, IL 62320.

4. At all times relevant to the Complaint, Respondent Professional Swine Management, LLC ("Professional") was and is an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Professional is Joseph F. Connor, 34 West Main Street, PO Box 220, Carthage, IL 62321.

#### **B. Site Description**

1. At all times relevant to the Complaint, Respondent Pinnacle owned and operated an 1800-head sow swine production facility located along County Road 600N approximately 2.5 miles north of Colmar, in the Northwest quarter of Section 3, T.4N., R.4W., in LaMoine Township, McDonough County, Illinois (the "facility" and "site").

2. Respondent Professional jointly operates the facility with Respondent Pinnacle.

3. The facility consists of a gestation confinement building and farrowing

confinement building, an office and laboratory building, an incinerator used to burn dead swine, a truck washing structure and various manure handling structures. Both the truck wash and the confinement buildings are in the watershed of Troublesome Creek, which flows into the LaMoine River. Various portions of one or more unnamed tributaries to Troublesome Creek flow through and near the facility, including a small stream that flows near the truck washing structure.

4. On March 2, 2004, the Illinois EPA conducted an inspection of the facility in response to a citizen complaint. At the time of the inspection, the Illinois EPA inspectors observed that a truck wash was in operation at the facility. The facility manager told inspectors that the facility owned a livestock trailer and rented another and that the trailers were washed in the truck wash. The truck wash was a maintenance building associated with a former operation that had been converted to a single bay truck wash. Wastewater and manure solids washed from the trailers in the truck wash were diverted into a floor drain and discharged through a 4 inch PVC line with a concrete outfall. The pipe discharged into a channel in a cattle feedlot just south of the truck wash. The channel discharges into an unnamed tributary of Troublesome Creek. The channel flows from north to south.

5. At the time of the March 2, 2004 inspection, two samples were collected downstream of the truck wash discharge point. Samples were collected at the point of discharge. At the discharge point, brown, turbid liquid was ponded in the channel. The liquid had a strong swine waste odor. Brown sludge was present in the channel and was noted to be about 10 inches deep. Black, septic sludge was also present. Samples were also collected along the discharge channel about 20 yards south of the discharge point. The inspectors observed a brown colored, turbid and odorous liquid at this location. The liquid contained a strong swine waste odor.

6. At the time of the March 2, 2004 inspection, no construction and operation permit had been issued by the Illinois EPA for the facility's truck wash and the Illinois EPA had not received a construction and operation permit application from the facility.

7. Respondents never applied for, nor obtained, a National Pollution Discharge



Elimination System ("NPDES") permit for subject truck wash.

8. At the time of the March 2, 2004 inspection, the facility had failed to report the wastewater release discharged from the facility's truck wash to the Illinois Emergency Management Agency. Pursuant to 35 Ill. Adm. Code 580.105, a reporting requirement applies to all releases of 25-gallons or more of livestock wastewater to surface water or groundwater from livestock waste storage and handling facilities and from the transportation of livestock waste (pipelines, pumps, and transportation equipment). At the time of the inspection, the Illinois EPA inspectors advised facility personnel to report the release and they refused to do so.

9. At the time of the March 2, 2004 inspection, manure solids were stockpiled along the access road just east of the truck wash. The stockpiled manure solids were not contained in any manner so as to prevent runoff and leachate from draining from the stockpiles off-site.

10. The March 2, 2004 inspection was conducted in response to a citizen complaint submitted on the same date by a neighbor of the facility, reporting very offensive odors of burning flesh coming from the facility. The neighbor experienced the odor three-fourths of a mile from the facility. The neighbor reported that the odor, at times, forced her husband to stop outdoor activities and come indoors.

11. On November 9, 2004, the Illinois EPA received another complaint from the same neighbor reporting that the neighbors had experienced very offensive odors from the facility mid-afternoon on November 6, 2004. The neighbors observed that the incinerator at the facility was in operation at the time they experienced the odor. The wind was from the southwest, blowing from the direction of the facility toward the neighbors residence.

12. Dead swine are incinerated at the facility. A Larry Lewis Livestock incinerator with an after-burner is utilized at the facility to incinerate dead swine.

13. At the time of the inspection, the facility was operating the incinerator under Air Permit No. 109809AAc, issued by the Illinois EPA. This permit contains nine special conditions. These conditions include operational restrictions associated with the afterburner, a continuous afterburner temperature-monitoring requirement, and several records/reporting requirements.

Pursuant to the permit, the afterburner must be preheated and maintained at the recommended temperatures and the crematorium feed rate and the operating hours recorded. These records must be maintained on-site for three years. The permit requires that an air emission report be submitted annually. If operated correctly, the incinerator should not produce off-site odors.

14. Based on discussions with facility personnel, Illinois EPA inspectors ascertained that the facility failed to pre-heat and obtain appropriate temperatures in the incinerator prior to loading carcasses into the incinerator. Further, the facility failed to install a monitoring device that would indicate whether or not appropriate temperatures were maintained while the incinerator was in operation. Written operating instructions for the incinerator, submitted by the Defendants to the Illinois EPA, indicate that it was standard procedure that the facility personnel load animal carcasses prior to pre-heating the incinerator.

15. Respondents failed to comply with the facility's air permit conditions by failing to obtain and install a proper monitoring device and to operate the incinerator so that it was pre-heated and maintained at proper temperatures.

16. At the time of the March 2, 2004 Illinois EPA inspection, the inspectors observed a trash burn pile near the facility office. The burn pile contained veterinary medical waste items.

17. Veterinary medical waste is categorized as a class of refuse requiring special handling and disposal in an apparatus specifically designed for such waste.

18. On March 29, 2006, the Illinois EPA conducted a compliance inspection at the facility. At the time of the inspection, construction was underway at the site to double the capacity of the facility. A new gestation building with a maximum capacity of approximately 1,600 sows was under construction. The new gestation building would also include some gilt pens. An addition was also being constructed on the farrowing building, that included seven farrowing rooms with 52 crates per room.

19. At the time of the March 29, 2006 inspection, the Respondents had failed to file a notice of intent with the Illinois EPA for coverage under the state's general storm water permit for construction sites, and had failed to submit to the Illinois EPA a storm water pollution prevention plan.

20. At the time of the March 29, 2006 inspection, the inspectors observed that the drainage system installed prior to construction at the site to properly handle excess storm water at the site as it existed prior to construction, had received a significant amount of silt due to recent construction. In this silted condition, and in that no additional structures or practices had been installed or implemented to handle storm water runoff during construction, there existed a threat that construction activity storm water pollution could discharge from the site. A field tile riser existed at the location of a pre-existing retention basin. The silt trap associated with the riser was overloaded, and thus there existed a threat the riser could serve as a conduit to moving silt into the field tile receiving waters. The retention basin itself was silted in and thus existed in a condition of reduced capacity to handle storm water.

**C. Allegations of Non-Compliance**

Plaintiff contends that the Respondents have violated the following provisions of the Act and Illinois Pollution Control Board ("Board") Water Pollution and Air Pollution Regulations:

**Count I**

1. By causing or allowing the discharge of contaminants in such a manner as to threaten water pollution in a channel that flowed into an unnamed tributary of Troublesome Creek, and by causing or allowing the deposit of solids in the channel in an un-contained manner as to threaten water pollution, Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

2. By causing or allowing livestock waste to discharge directly from the truck wash through a pipe onto the ground, Respondents have deposited swine waste upon the ground in such a place and manner so as to tend to cause a water pollution hazard, and have thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

3. By causing or allowing discharges of livestock wastewater and manure solids to directly drain from the facility's truck wash through a pipe and be discharged and directly deposited on the ground as brown colored, turbid, odorous deposits and flows, Respondents have caused, threatened or allowed the discharge of contaminants into the environment so as

to tend to cause water pollution and have deposited swine waste upon the ground in such a place and manner so as to tend to cause a water pollution hazard, and have thereby violated Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d) (2004), and 35 Ill. Adm. Code 304.106.

4. By causing or allowing livestock waste solids to be stockpiled in an un-contained manner upon the ground near the access road east of the truck wash at the facility, Respondents have caused, threatened or allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution and have deposited swine waste upon the ground in such a place and manner so as to cause or tend to cause water pollution, and have thereby violated Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d) (2004), and 35 Ill. Adm. Code 501.404(b)(1).

5. By causing or allowing a new livestock waste-handling facility, namely the facility's truck wash, which handles livestock waste in a solid and liquid form to exist without a minimum of 120-day storage for the liquid waste and thereby cause or threaten to cause water pollution, Respondents have violated Section 12(a), 415 ILCS 5/12(a)(2004), and 35 Ill. Adm. Code 501.404(c)(4)(B).

### **Count II**

6. By constructing and operating a truck wash with no liquid waste storage capacity, that was designed to and did discharge liquid livestock waste directly into a channel in a cattle feedlot that discharges into an unnamed tributary of Troublesome Creek, Respondents have violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and 35 Ill. Adm. Code 309.102(a).

### **Count III**

7. By failing to apply for and obtain a construction and operation permit from the Illinois EPA for the facility's truck wash, Respondents have caused or allowed the discharge of contaminants in such a manner as to cause, allow or threaten water pollution in a channel that flowed into an unnamed tributary of Troublesome Creek, from an un-permitted wastewater source, and have thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), and 35 Ill. Adm. Code 309.202.

**Count IV**

8. By failing to properly operate the facility's incinerator, Respondents have caused or allowed the discharge or emission of a contaminant into the environment in any State so as to cause or tend to cause air pollution, Respondents have thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2004), 35 Ill. Adm. Code 201.141, and 35 Ill. Adm. Code 501.402(c)(3).

**Count V**

7. By failing to comply with the facility's air permit conditions, Respondents have violated Section 9(b) of the Act, 415 ILCS 5/9(b) (2004).

**Count VI**

9. By causing or allowing the open burning of veterinary medical waste items at the facility, Respondents have violated Section 9(c) of the Act, 415 ILCS 5/9(a) (2004), and 35 Ill. Adm. Code 237.102.

**Count VII**

10. By causing or allowing or threatening the discharge of construction activity storm water contaminants into waters of the State without coverage under the state's general storm water NPDES permit, Respondents have violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

**Count VIII**

11. By failing to report the release of livestock waste from a livestock waste handling facility upon discovery of the release, and, at the latest, 24 hours after discovery of the release, Respondents have violated Section 4(h) of the Act, 415ILCS 5/4(h) (2004), and 35 Ill. Adm. Code 580.105.

**D. Admission of Violations**

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

affirmatively admit the allegations of violation within the Complaint and referenced within Section III.C herein, and this Stipulation shall not be interpreted as including such admission.

**E. Compliance Activities to Date**

1. The practice of maintaining manure stacks along the east access road at the facility has been halted.

2. The truck wash was shut down upon notification of violation. A construction and operation permit was obtained for the truck wash. A waste storage tank for livestock waste liquid with a capacity of 120 days was designed for the truck wash and installed. Water drainage around the truck wash building was modified. Construction was completed in early fall of 2004 and the truck wash has been in operation since. Livestock waste water from the truck wash is land applied on an as needed basis. A neighbor was hired to haul out the waste water. The area where the waste water previously discharged from the truck wash has been re-seeded to pasture. Dirt work around the truck wash building was modified to address groundwater pressure in the collection pit and to prevent an empty collection tank from floating up out of the ground. The storage tank is partially buried to prevent freezing.

3. Corrective measures undertaken by the Respondents to address veterinary waste disposal include: (1) the burn area on the facility grounds was eliminated; (2) all sharps are discarded in red bio-hazard sharps containers which are then transported to the Carthage Veterinary Services, Ltd. clinic for proper disposal; (3) all empty vaccine bottles are disposed in the garbage which is put into a dumpster that is serviced by a commercial garbage service that hauls to a sanitary landfill; (4) facility policy has been established strictly prohibiting any open burning on the grounds.

4. Corrective measures to address failure to adhere to air permit conditions include: to comply with annual reporting requirements, data for 2003 and 2004 for tons/month and hours/month of use shall be compiled by the facility and submitted to the Illinois EPA; (2) the facility shall ensure that the Illinois EPA has the proper address for effective notification relevant to the facility's air permit and any apparent violations of permit conditions.

5. Corrective measures to address violations relevant to the operation of the facility's incinerator include: (1) the facility has installed a concrete compost structure to reduce the amount of incineration being done at the farm. The compost structure has four bays and a temperature log to be kept current on a weekly basis; (2) an EasyView™ Dual Input Thermometer and Datalogger Model EA15 with digital display from Extech Instruments has been installed in the afterburner. The facility has also purchased Type K Thermomcouple probe and connecting wire for use on the incinerator. The Datalogger stores data electronically. The device is handheld so it can be taken to the facility's computer and data downloaded. It stores data points and time. Software provided by Extech will be used to download data and store information as text files that can be opened by other programs for analysis; (3) an incinerator use log is in place to monitor run times and pounds incinerated; (4) a new standard operating procedure for employees who operate the incinerator has been developed to incorporate the new afterburner temperature monitoring device.

6. Respondents have provided confirmation to the Illinois EPA that a monitoring device has been installed on the incinerator that will record pre-heating temperatures as well as burning temperatures during operation.

7. Respondents have submitted a copy of the written procedure established by the facility for the operation of the incinerator that includes procedures for pre-heating the incinerator prior to loading it with carcasses, and proper monitoring of the burn temperature while the incinerator is in operation. The written procedure has been found to be acceptable by the Illinois EPA.

8. In response to notification of the need for construction stormwater NPDES permit coverage, Respondents obtained NPDES stormwater coverage under the State's general permit for the expansion construction conducted at the site in 2006.

#### **IV. APPLICABILITY**

**A.** This Stipulation shall apply to and be binding upon the Complainant and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any

successors or assigns of the Respondents. The Respondents waive as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

**B.** No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondents under this Stipulation. In the event of any conveyance of title, easement or other interest in the facility, the Respondents shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondents and a proposed purchaser or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondents.

**C.** In the event that the Respondents propose to sell or transfer any real property or operations subject to this Stipulation, the Respondents shall notify the Complainant 30 days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondents shall make the prospective purchaser or successor's compliance with this Stipulation a condition of any such sale or transfer and shall provide a copy of this Stipulation to any such successor in interest. This provision does not relieve the Respondents from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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



## V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the Act, and the Board Regulations, 35 Ill. Adm. Code, Subtitles A through H.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2002), provides as follows:

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

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

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

1. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondents' violations.
2. There is social and economic benefit to the facility.
3. Operation of the facility is suitable for the area in which it occurred if the facility if operated in compliance with the state's environmental regulations.
4. Obtaining a state construction permit prior to construction of the truck wash and obtaining NPDES stormwater coverage prior to initiating construction of the facility expansion and compliance with permit terms are technically practicable and economically reasonable. Proper construction of the truck wash so as to prevent wastewater discharges to the environment, and proper handling of waste solids so as to prevent discharges to the

environment, are technically practicable and economically reasonable. Operation of the facility's incinerator in compliance with its air permit is technically practicable and economically reasonable. Proper disposal of veterinary medical waste, particularly in light of the fact principals of both Respondents are veterinarians, and one Respondent is also a principal in a veterinary clinic that already had in place proper systematic disposal of veterinary medical wastes, is technically practicable and economically reasonable. Proper reporting of wastewater releases is technically practicable and economically reasonable.

5. After corrective measures were instituted to address Counts 1 through 6 and Count 8 of the Complaint and thereby compliance was achieved with the Act and the Board Regulations, Respondents failed to obtain stormwater NPDES coverage for the construction of a facility expansion that occurred in 2006. Upon discovery of this failure to obtain coverage by the Illinois EPA, and upon being ordered to cease construction, Respondents subsequently obtained proper permit coverage.

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

Section 42(h) of the Act, 415 ILCS 5/42(h)(2002), provides as follows:

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

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and

7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

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

1. The Respondent failed to obtain a permit for construction site activities prior to beginning construction activities at the site, and violated other provisions of the Act and Board Regulations. The violations that are the subject of Counts 1 through 6 and 8 of the Complaint began on or around March 2, 2004, and were individually resolved at various times in the following two years. The violations that are the subject of Count 7 of the Complaint at a time better known by the Respondents and were discovered by the Illinois EPA on March 29, 2006, and were resolved within a matter of months.

2. Respondents were diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its noncompliance, with regard to all counts except Counts 4 and 5. Respondents were slow to come into compliance with regard to the air pollution and air permit compliance violations.

3. Respondents incurred costs of \$9,779.00 to bring the truck wash into compliance. The compliance cost to eliminate open burning at the facility was \$100.00. The cost to construct a compost structure as an alternative means of handling dead animals was \$7,853.00. The cost of the digital monitoring device for the incinerator was \$650.00. The total of these amounts is \$18,382.00.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Twenty-Seven Thousand Dollars (\$27,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.

7. Respondents have agreed to perform the following as supplemental environmental projects. The cost incurred by the Respondents in the performance of each

project appears at the end of the description.

- A. Five hundred foot long windbreak and privacy screen, as designed by the McDonough County Soil and Water Conservation Service, to consist of at least 100 Aus Trees, 41 Arborvitae, and 21 Norway Spruce. The installation will also serve as a filter strip for the cattle lot located immediately south of the truck wash facility. The tree planting was conducted in spring of 2006. Estimated cost is \$6,000.00, for trees, planting, mulch, fertilizer, irrigation equipment, fencing and labor involved in caring for newly planted trees. Annual costs for maintenance are estimated to be \$1,500.00 to \$2,000.00 for trimming, mowing, irrigation, fence maintenance and replacement of trees.
- B. McDonough County SWCD was recently given a farm which they want to transform into a conservation demonstration site. SWCD proposes creating a wetland, various tree planting demonstrations and a possible pond construction project. This site would then be available to school children and other interested parties. The donation is in the amount of \$2,500.00.
- C. Prairie Hills Resource Conservation and development is conducting a wind monitoring project at nine area schools. The organization has received a \$15,000.00 grant from the Illinois Clean Energy Community Foundation to purchase monitoring equipment to set up at the schools. The organization is seeking funding to pay for a feasibility study, to be conducted by an engineer at a cost of \$900.00, per school, for a total of \$8,200.00. Respondents will make a donation toward this sum, in the amount of \$2,500.00.

## **VIII. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Respondents shall, jointly and severally, pay a civil penalty of Twenty-Seven Thousand Dollars (\$27,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

b. Payment shall be made by certified check, money order or electronic funds transfer, payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF") and shall be sent by first class mail, unless submitted by electronic funds transfer, and delivered to:

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

c. The name, case number and Respondent Pinnacle's Federal Employer Identification Number ("FEIN"), 75-3029416, and Respondent Professional's Federal Employer Identification Number ("FEIN"), 37-1412168, shall appear on the face of the certified check or money order. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

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

Thomas Andryk  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
PO Box 19276  
Springfield, IL 62794-9276

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2004). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designate to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

3. For purposes of payment and collection, Respondents may be reached at the

following addresses:

Doug Groth, DVM  
Professional Swine Management, LLC  
PO Box 220  
Carthage, IL 62321

K.T. Wright, DVM  
Pinnacle Genetics, LLC  
Blandinsville Veterinary Clinic  
RR 1  
Blandinsville, IL 61420

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

**B. Compliance Plan**

1. The swine carcass compost facility at Pinnacle shall be operated in such a manner so as not to cause a contaminated discharge or other leachate runoff from the site.

2. The Respondents shall provide the Illinois EPA with the first twelve months of pre-heating and burn temperature monitoring records for the incinerator, commencing with the date testing and calibration of the monitoring device is complete, or if testing and calibration is not required, commencing with the day after installation. The Respondents shall also submit to the Illinois EPA actual incinerator loading rates and completed incinerator operation log sheets, a sample of which is attached to this consent order as Figure 1, as well as general deads and composting data for the 12-month period immediately following the installation of the monitoring device. Said records are to include the weight of the animals being incinerated, the number of hogs/pigs/swine being incinerated per day, the total number of dead at the facility per day or week, the total number of carcasses going into the compost pile per day or week. Said records shall begin to be submitted not later than 105 days of the date upon which the monitoring device is installed on the facility's incinerator and deemed operational. After the 12 months of data and logs referred to in this Paragraph VIII.B.4 have been provided to the Illinois EPA, all monitoring device and incinerator loading rate data and all incinerator log sheets shall thereafter be kept at the facility and be available for review at the time of any Illinois EPA inspection.

3. In the event any compost material or incinerator ash material generated from the

swine carcass compost facility or the incinerator is land applied, all such compost or ash material shall be land applied in such a manner so as not to create a threat or hazard of water pollution.

**C. Stipulated Penalties**

1. If the Respondents fail to complete any activity or fails to comply with any response or reporting requirement by the date specified in Section VIII.B ("Compliance Plan") of this Stipulation, the Respondents shall provide notice to the Complainant of each failure to comply with this Stipulation. In addition, the Respondents shall pay to the Complainant, for payment into the EPTF, stipulated penalties per violation for each day of violation in the amount of \$100.00 until such time that compliance is achieved.

2. Following the Complainant's determination that the Respondents have failed to complete performance of any task or other portion of work, failed to provide a required submittal, including any report or notification, Complainant may make a demand for stipulated penalties upon Respondents for its noncompliance with this Stipulation. Failure by the Complainant to make this demand shall not relieve the Respondents of the obligation to pay stipulated penalties.

3. All penalties owed the Complainant under this section of this Stipulation that have not been paid shall be payable within thirty (30) days of the date the Respondents know or should have known of its noncompliance with any provision of this Stipulation.

4. a. All stipulated penalties shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA for deposit into the EPTF and shall be sent by first class mail, unless submitted by electronic funds transfer, and delivered to:

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

b. The name and number of the case and the Respondents' FEIN shall appear on the face of the check. A copy of the certified check, money order or record of

electronic funds transfer and any transmittal letter shall be sent to:

Jane E. McBride  
Assistant Attorney General  
500 South Second Street  
Springfield, Illinois 62702

5. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

**D. Future Use**

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.F, below, Respondents hereby agree that this Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and (i) and/or 5/42(h). Further, Respondents agree to waive, in any subsequent enforcement action, any right to contest whether these alleged violations were adjudicated.

**E. Cease and Desist**

The Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C. ("Allegations of Non-Compliance") of this Stipulation.

**F. Release from Liability**

In consideration of the Respondents' payment of a \$ 27,000.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, and to Cease and Desist as contained in Section VIII.E and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the



Complainant releases, waives and discharges the Respondents from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on October 24, 2006. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

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

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

#### **G. Right of Entry**

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondents' facility which is the subject of this Stipulation, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

#### **H. Correspondence, Reports and Other Documents**

Any and all correspondence, reports and any other documents required under this

Stipulation, except for payments pursuant to Sections VIII.A. ("Penalty Payment") and C ("Stipulated Penalties") of this Stipulation shall be submitted as follows:

As to the Complainant

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

Thomas Andryk  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Eric Ackerman  
Illinois EPA  
5415 N. University  
Peoria, Illinois 61614

As to the Respondents

Doug Groth, DVM  
Professional Swine Management, LLC  
PO Box 220  
Carthage, IL 62321

K.T. Wright, DVM  
Pinnacle Genetics, LLC  
Blandinsville Veterinary Clinic  
RR 1  
Blandinsville, IL 61420

**I. Modification of Stipulation**

The parties may, by mutual written consent, extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.H. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation

to approve and accept the Stipulation as amended.

**J. Enforcement of Board Order**

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

2. Respondents agree that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

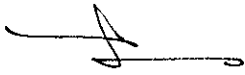
4. It is the intent of the Complainant and Respondents that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

WHEREFORE, Complainant and Respondents request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

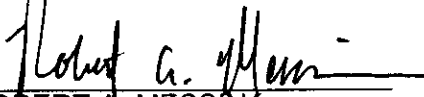
LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:   
\_\_\_\_\_  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

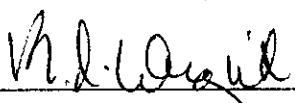
DATE: 1/18/07

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

BY:   
\_\_\_\_\_  
ROBERT A. MESSINA  
Chief Legal Counsel

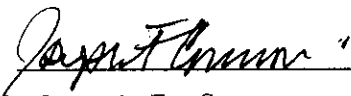
DATE: 12/20/06

PINNACLE GENETICS, LLC

BY:   
\_\_\_\_\_  
Name: ~~K. T. WRIGHT~~  
Title: President

DATE: 1/12/07

PROFESSIONAL SWINE MANAGEMENT, LLC

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

DATE: 01/16/2007