



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

October 28, 2009

RECEIVED  
CLERK'S OFFICE  
OCT 30 2009  
STATE OF ILLINOIS  
Pollution Control Board

ORIGINAL

John T. Therriault, Assistant Clerk  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. J. B. Timmermann Farms***  
**PCB No. 07-70**

Dear Clerk:

Enclosed for filing please find the original and ten copies 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 cursive script, appearing to read "Jane E. McBride".

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

JEM/pjk  
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
J. B. TIMMERMANN FARMS, LTD., )  
an Illinois corporation, )  
 )  
Respondent. )

PCB No. 07-70  
(Enforcement - Water)

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Pollution Control Board

JOURNAL

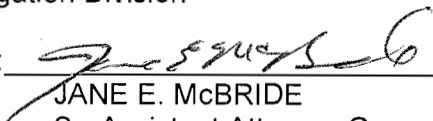
NOTICE OF FILING

To: James Richard Myers  
LeFevre Oldfield Myers Apke & Payne Law Group, Ltd.  
303 S. Seventh St., P.O. Box 399  
Vandalia, IL 62471

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois an 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  
Sr. Assistant Attorney General  
Environmental Bureau

Attorney I.D. #6285057  
500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: October 28, 2009

RECEIVED  
CLERK'S OFFICE

OCT 30 2009

STATE OF ILLINOIS  
Pollution Control Board

CERTIFICATE OF SERVICE

I hereby certify that I did on October 28, 2009, send by U.S. mail, first class 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: James Richard Myers  
LeFevre Oldfield Myers Apke & Payne Law Group, Ltd.  
303 S. Seventh St., P.O. Box 399  
Vandalia, IL 62471

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

To: John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

A copy of the Notice of Filing 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  
Sr. Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
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Complainant, )  
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vs. )  
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J. B. TIMMERMANN FARMS, LTD., )  
an Illinois corporation, )  
)  
Respondent. )

PCB No. 07-70  
(Enforcement - Water)

ORIGINAL

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) (2008), 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) (2008). 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) (2008).

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) (2008).

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  
Sr. Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: October 28, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
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J. B. TIMMERMANN FARMS, LTD., )  
an Illinois corporation )  
Respondent. )

PCB NO. 07-70  
(Enforcement - Water)

ORIGINAL

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and J.B. TIMMERMANN FARMS, LTD. ("Respondent"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2006), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

**I. STATEMENT OF FACTS**

**A. Parties to the Stipulation**

1. On January 29, 2007, 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 (2006), against the Respondent.

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 (2006).

3. At all times relevant to the Complaint, Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and operated a dairy operation consisting of approximately 675 milking cows, located on the north side of Highline Road, in Section 28 of Breese Township, Clinton County, Illinois (“facility” or “site”).

**B. Allegations of Non-Compliance**

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board regulations:

Count I

1. By causing and threatening to cause water pollution, and by violating the water quality standard of Section 302.203 of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code 302.203, and the dissolved oxygen standard of Section 302.206 of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code 302.206, the Respondent has violated Section 21(a) of the Act, 415 ILCS 5/12(a).

Count II

2. By causing, allowing or threatening the discharge of contaminants into waters of the State without an NPDES permit, the Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f), and Section 309.102(a) of the Board’s Water Pollution Regulations, 35 Ill. Adm.

Code 309.102(a).

Count III

3. By failing to properly maintain the facility livestock waste lagoon to ensure adequate storage capacity so that an overflow does not occur, Respondent has violated Section 501.404(c)(3) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.404(c)(3).

4. By failing to adequately divert clean water from the facility waste handling system and storage, Respondent has violated Section 501.403(a) of the Boards Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.403(a).

5. By causing or allowing the deposit of contaminants on the land in such a place and manner as to create a water pollution hazard, Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d).

**C. Non-Admission of Violations**

The Respondent neither admits nor denies the violation(s) alleged in the Complaint filed in this matter and referenced herein.

**D. Compliance Activities to Date**

1. The Respondent has retained the services of a consulting engineer to conduct a site study and provide an engineering plan to install and implement livestock waste and silage handling corrective measures. Said study and plan was approved by the Illinois EPA in April 2009.

2. The Respondent has submitted an NPDES permit application and, as part of that application, a Comprehensive Nutrient Management Plan for the Illinois EPA's approval.



## II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

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

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation. In the event that the Respondent proposes to sell or transfer any real property or operations subject to this Stipulation, the Respondent shall notify the Complainant and the Illinois EPA thirty (30) calendar days prior to

the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondent shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondent site access and all cooperation necessary for Respondent to perform to completion any compliance obligation(s) required by this Stipulation. The Respondent shall provide a copy of this Stipulation to any such successor in interest and the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondent and a proposed purchaser or operator of the facility may jointly request, and the Complainant and the Illinois EPA, in their 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 Respondent. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), provides as follows:

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

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

eliminating the emissions, discharges or deposits resulting from such pollution source; and

5. any subsequent compliance.

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

1. Documented discharges from both the livestock waste lagoon and the silage storage area resulted in a violation of water quality standards, including a violation of the dissolved oxygen standard. The discharges of contaminants from the Defendants' facility have caused, threatened or allowed water pollution in that such discharges have rendered the waters of the State harmful, detrimental and/or injurious to public health, safety and/welfare, and to recreational and other legitimate uses, including the support of wild animals, birds, fish and/or other aquatic life and the discharges created a nuisance.

2. There is social and economic benefit to the facility when it is operated in compliance with the state's environmental regulations.

3. Operation of the facility, in compliance with the state's environmental regulation, is suitable for the area in which it occurred.

4. Operating the subject dairy facility in compliance with the state's environmental regulations is both technically practicable and economically reasonable.

5. Respondent is in the process of bringing this facility into compliance with the Act and the Board Regulations.

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

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section,

the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

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

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

1. The discharge violations were first reported August 30, 2004 and were observed by the Illinois EPA on August 31. As of September 14, 2004, the receiving stream water was still discolored. Dissolved oxygen was still low as of September 14, 2004. Respondent submitted an acceptable engineering report in early 2009, and submitted a Comprehensive Nutrient Management Plan to complete the facility's NPDES application in June 2009.
2. Respondent has agreed to bring his facility into compliance.

3. The subject facility lacked appropriate clean water diversion structures and practices appropriate to keep storm water out of the waste handling system, thereby failing to preserve storage capacity. Further, the subject facility failed to properly manage silage storage and leachate runoff. The estimated cost of the engineering study, plan development and implementation of corrective measures is \$70,000 to \$100,000. Using a conservative compliance cost estimate fo \$70,000, and a compliance date of June 1, 2009, yields an economic benefit amount of \$10,379.00.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Fifteen Thousand (\$15,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's and the Illinois EPA's knowledge, Respondent has no previously adjudicated violations of the Act.

6. Pursuant to 35 Ill. Adm. Code 580.105(a), Respondent was under the obligation to report the discharges and he failed to do so until instructed to by the Illinois EPA who responded to the discharges.

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

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

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

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

1. If the Respondent fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant and the Illinois EPA of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$ 25.00 per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

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

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

**C. Payment Procedures**

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

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

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

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

**D. Future Compliance**

1. The Respondent shall cooperate in a timely fashion with Illinois EPA regarding any requests for additional information necessary to allow the Illinois EPA to complete its review of the Defendant’s NPDES Permit application. The Defendant shall, within twenty-one (21) business days of receipt of any such request for additional information from the Illinois EPA, provide the requested information to the Illinois EPA. Upon issuance of an NPDES Permit, the Defendant shall comply with all requirements contained therein.

2. By October 1, 2009, the Respondent shall fully implement, complete construction and bring all installation and practices called for in the facility’s approved engineering plan and Comprehensive Nutrient Management Plan into operation.

3. Respondent shall weekly record the freeboard level of the facility's livestock waste lagoon, and shall maintain records of all land application events, including amounts of waste applied and the location at which the waste was applied, and submit both the freeboard and land applications records to the Illinois EPA on a monthly basis. Respondent shall submit these records on the first of each month. Respondent shall initiate this practice immediately and continue it until all installments, construction and practices called for in the facility's approved engineering plan have been implemented and are operational.

4. The Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

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

5. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.



**E. Release from Liability**

In consideration of the Respondent's payment of the \$15,000.00 penalty, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the 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 January 29, 2007. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent 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 Respondent's 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 Respondent.

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

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Jane E. McBride  
Sr. Assistant Attorney General  
Illinois Attorney General's Office  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

As to the Illinois EPA

Joey Logan Wilkey  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Joseph D. Stitely  
Bureau of Water  
Illinois EPA  
2309 W. Main St.  
Marion, Illinois 62794-9276

As to the Respondent

Mr. James R. Meyers, Esq.  
LEFEVRE OLDFIELD MYERS APKE & PAYNE LAW GROUP, LTD  
303 S. Seventh Street  
PO Box 399  
Vandalia, IL 62471

David Timmermann  
J.B. Timmermann Dairy Farm  
11601 South Germantown Rd.  
Breese, Illinois 62230

**G. Enforcement and Modification of Stipulation**

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

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

**H. Execution of Stipulation**

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

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

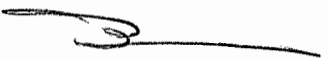
PEOPLE OF THE STATE OF ILLINOIS, FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois


DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

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

BY:

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

BY:

  
\_\_\_\_\_  
JOHN J. KIM  
Chief Legal Counsel

DATE:

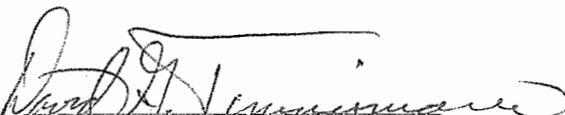
10/27/09

DATE:

10/21/09

J.B. TIMMERMANN FARMS, LTD

BY:

  
\_\_\_\_\_  
DAVID TIMMERMANN

DATE:

10-6-09