

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
   Complainant, )  
 )  
   vs. )  
 )  
 STROUT CROSSING, LLC, )  
 an Illinois limited liability company, )  
 JERRY WEBSTER, and MARK )  
 WEBSTER, )  
 )  
   Respondents. )

PCB No.  
 (Enforcement - Water)

**NOTICE OF ELECTRONIC FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that on August 17, 2011, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a COMPLAINT, 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: *Rachel R Medina*  
 Rachel R. Medina  
 Assistant Attorney General  
 Environmental Bureau

500 South Second Street  
 Springfield, Illinois 62706  
 217/782-9031  
 Dated: August 17, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I did on August 17, 2011, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.



Rachel R. Medina  
Assistant Attorney General

This filing is submitted on recycled paper.

**SERVICE LIST**

James A. Hansen  
Attorney for Respondents  
Schmiedeskamp, Robertson, Neu & Mitchell, LLP  
525 Jersey  
P.O. Box 1069  
Quincy, IL 62306

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

|   |   |                              |
|---|---|------------------------------|
| <b>PEOPLE OF THE STATE OF ILLINOIS,</b>       | ) |                              |
|   | ) |                              |
| <b>Complainant,</b>                           | ) |                              |
|   | ) |                              |
| <b>vs.</b>                                    | ) | <b>PCB No.</b>               |
|   | ) | <b>(Enforcement - Water)</b> |
| <b>STROUT CROSSING, LLC,</b>                  | ) |                              |
| <b>an Illinois limited liability company,</b> | ) |                              |
| <b>JERRY WEBSTER, and MARK</b>                | ) |                              |
| <b>WEBSTER,</b>                               | ) |                              |
|   | ) |                              |
| <b>Respondent.</b>                            | ) |                              |

**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. A Complaint and Stipulation and Proposal for Settlement are being filed simultaneously with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. 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: *Rachel R Medina*  
Rachel R. Medina  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: August 17, 2011

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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| <b>PEOPLE OF THE STATE OF ILLINOIS,</b>       | ) |                              |
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| <b>Complainant,</b>                           | ) |                              |
|   | ) |                              |
| <b>v.</b>                                     | ) | <b>PCB NO.</b>               |
|   | ) | <b>(Enforcement - Water)</b> |
|   | ) |                              |
| <b>STROUT CROSSING, LLC,</b>                  | ) |                              |
| <b>an Illinois Limited Liability Company;</b> | ) |                              |
| <b>JERRY WEBSTER; and, MARK WEBSTER,</b>      | ) |                              |
|   | ) |                              |
| <b>Respondents.</b>                           | ) |                              |

**COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, STROUT CROSSING LLC, an Illinois Limited Liability Company; JERRY WEBSTER; and, MARK WEBSTER, as follows:

**COUNT I**

**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 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) (2008).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2008), and charged *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. The Illinois Pollution Control Board ("Board") is an agency of the State of Illinois created by the Illinois General Assembly in Section 5 of the Act, 415 ILCS 5/5 (2008), and charged with the duty of promulgating regulations under the Act, pursuant to Section 26 of the Act, 415 ILCS 5/26 (2008).

4. STROUT CROSSING, LLC ("Strout Crossing") is a registered limited liability company in Illinois. JERRY WEBSTER, R.R. #1 Box 105, Pleasant Hill, IL 62366, is the manager and registered agent for Strout Crossing.

5. Strout Crossing owns and operates a 6,000 head sow operation located at Section 14, Township 7 South, Range 3 West, of the 4th Principal Meridian, in Pike County, Illinois between the cities of Pearl and Nebo ("site"). The site is bordered on the north side by Vin Fiz Highway.

6. The sow operation is located in the SE quarter of the site and comprises three buildings for containing the sows and two deep manure pits located under the sow buildings. Strout Crossing periodically has the manure pumped out of the pits, transported to adjacent fields, and applied to the land.

7. JERRY WEBSTER and MARK WEBSTER are in the business of land application of livestock waste and conducted the land application service for Strout Crossing. JERRY WEBSTER owns the equipment utilized in the business. MARK WEBSTER manages the land application of livestock waste and performed the land application of livestock waste to the 84-acre field located adjacent to and northwest of the sow operation at Strout Crossing.

8. Silkwood Creek flows from the southeast in a northwesterly direction adjacent to the northeast and east borders of the 84-acre application field. Silkwood Creek is downgrade from the steeply sloping 84-acre field.

9. On August 6, 2008, in response to a complaint that a fish kill was occurring in Silkwood Creek, the Illinois EPA inspected the 84-acre field upon which the Respondents had land applied swine waste. The inspector observed that recent land application had occurred within 25 feet of the Silkwood Creek. The Illinois EPA inspector observed pools of standing swine waste liquid at the north end of the wheat field. A brown matted path of damp vegetation was observed between the pooled liquid and Silkwood Creek.

10. At the time of the August 6, 2008 inspection, the Illinois EPA inspector observed approximately 100 to 200 dead fish less than one quarter of a mile downstream of the land application field. The dead fish existed in an area approximately one eighth mile in length in Silkwood Creek.

11. At the time of the August 6, 2008 inspection, immediately downstream of the application field, Silkwood Creek was turbid, had a scum layer at its surface, and a swine waste odor.

12. At the time of the August 6, 2008, the Illinois EPA inspector spoke with Respondent Mark Webster who indicated that he had land applied waste from Respondent Strout Crossing's swine facility to the wheat field. Respondent Mark Webster indicated that the pooled liquid at the ends of the field were caused when the application rig turns around and the injection tool is out of the ground. Respondent Mark Webster indicated to the inspector that after he started land applying on the wheat field they received a large rainfall which increased the volume of liquid within the pools and may have caused some of the pooled liquid to reach Silkwood Creek.

13. At the time of his interview with Respondent Mark Webster, the Illinois EPA inspector advised the Respondent that the inspector could show Mr. Webster the location where it appeared that livestock waste had entered Silkwood Creek and the locations of the dead fish that were observed in Silkwood Creek. Respondent Mark Webster indicated to the inspector that he did not question what the inspector observed and did not need to make such observations.

14. Respondent Mark Webster, Respondent Jerry Webster and Respondent Strout Crossing failed to report the release of liquid swine waste that resulted in the August 6, 2008 fish kill.

15. At the time of the August 6, 2008 interview with Respondent Mark Webster, the Illinois EPA inspector advised Mr. Webster that future land applications of livestock waste



needed to be more than 200 feet from surface water and that any release of more than 25 gallons of livestock waste must be reported by phone and in written format.

16. On August 12, 2008, the Illinois EPA responded to a complaint indicating that sludge and brown water were observed in Silkwood Creek and the area smelled like swine waste. At the time of the inspection, the Illinois EPA inspector observed Silkwood Creek at a bridge near the entrance of Respondent Strout Crossing's swine facility. The Illinois EPA inspector observed Silkwood Creek to be turbid, a scum layer was observed on portions of the creek and the liquid in the creek was observed to have a gray color. After observing the facility's land applications fields, the Illinois EPA inspector determined that the August 12, 2008 condition of Silkwood Creek was due to the release of livestock waste from the wheat field that resulted in the August 6, 2008 fish kill and that it was not due to subsequent land application activity.

17. Section 12 of the Act, 415 ILCS 5/12 (2008), provides, in pertinent part, as follows:

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.

18. A "contaminant" is defined under Section 3.165 of the Act, 415 ILCS 5/3.165 (2008), as follows:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

19. A "person" is defined under Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), as follows:

"Person" is any individual, partnership, copartnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agency or assigns.

20. "Water Pollution" is defined under Section 3.545 of the Act, 415 ILCS 5/3.545

(2008), as follows:

"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 any 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.

21. "Waters" of the State are defined under Section 3.550 of the Act, 415 ILCS

5/3.550 (2008), as follows:

"Waters" means all accumulation 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.

22. The Respondents are "person[s]" as defined under Section 3.315 of the Act, 415

ILCS 5/3.315 (2008).

23. Swine waste and odor caused by swine waste are "contaminant[s]" as defined

under Section 3.165 of the Act, 415 ILCS 5/3.165.

24. The waters of Silkwood Creek are "waters" of the State as defined under Section

3.550 of the Act, 415 ILCS 5/3.550 (2008).

25. The discharge of swine waste into waters of the State, namely Silkwood Creek,

having created or likely created a nuisance, is water pollution as defined under Section 3.545 of the Act, 415 ILCS 5/3.545 (2008).

26. By causing or allowing the discharge of swine waste, a contaminant, from a land

application field into waters of the State so as to cause water pollution, the Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents, STROUT CROSSING, LLC, an Illinois Limited Liability Company; JERRY WEBSTER; and, MARK WEBSTER:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008), imposing a civil penalty of not more than the statutory maximum; and,
- E. Granting such other relief as the Board may deem appropriate.

**COUNT II**

**WATER POLLUTION HAZARD VIOLATIONS**

1-26. Complainant realleges and incorporates by reference herein paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of this Count II.

27. Section 12 of the Act, 415 ILCS 5/12 (2008), provides, in pertinent part, as follows:

No person shall:

\*\*\*

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

28. The Respondents have caused or allowed swine waste, a contaminant, to be deposited upon the land in proximity to Silkwood Creek and during a time when rain was imminent so as to create a water pollution hazard to Silkwood Creek.

29. By depositing swine waste upon the land in proximity to Silkwood Creek and during a time when rain was imminent so as to create a water pollution hazard, the Respondents have violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2008).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents, STROUT CROSSING, LLC, an Illinois Limited Liability Company; JERRY WEBSTER; and, MARK WEBSTER:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008), imposing a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

**COUNT III**

**DISCHARGING WITHOUT NPDES PERMIT**

1-26. Complainant realleges and incorporates by reference herein paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of this Count III.

27. At all times relevant to this Complaint, Strout Crossing did not have a National Pollutant Discharge Elimination System (NPDES) permit for point source discharges for the site.

28. On or about August 6, 2008, land application runoff discharged from the application field across vegetation into Silkwood Creek. As such, the discharge was to a navigable water of the United States.

29. A discharge from a land application field is a point source discharge.

30. Section 12 of the Act, 415 ILCS 5/12 (2008), provides, in pertinent part, as follows:

No person shall:

\*\*\*

- (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.

31. Section 502.103 of the Board's Agriculture Related Water Pollution Regulations, 35 Ill. Adm. Code 502.103, provides, in pertinent part, as follows:

An NPDES permit is required if more than the numbers of animals specified in any of the following categories are confined:

| <u>Number of Animals</u> | <u>Kind of Animals</u>               |
|--------------------------|--------------------------------------|
| ***<br>2,500             | ***<br>Swine weighing over 55 pounds |

32. By causing, threatening or allowing the discharge of swine waste from a land application field into Silkwood Creek without an NPDES permit and in violation of the Board's regulations, Respondent, Strout Crossing, LLC, has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2008).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, STROUT CROSSING, LLC, an Illinois Limited Liability Company:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008), imposing a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

**COUNT IV**

**OFFENSIVE CONDITIONS**

1-26. Complainant realleges and incorporates by reference herein paragraphs 1 through 26 of Count I as paragraphs 1 through 26 of this Count IV.

27. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides:

**Offensive Conditions**

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. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

28. On or about August 6, 2008, a discharge from Respondents' land application field at the site caused Silkwood Creek to have unnatural color, odor and turbidity.

29. By applying swine waste to land in such a manner so as to allow a discharge of contaminants which resulted in unnatural color, odor and turbidity in Silkwood Creek, Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents, STROUT CROSSING, LLC, an Illinois Limited Liability Company; JERRY WEBSTER; and, MARK WEBSTER:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008), imposing a civil penalty of not more than the statutory maximum; and

- E. Granting such other relief as the Board may deem appropriate.

**COUNT V**

**OFFENSIVE DISCHARGE**

1-27. Complainant realleges and incorporates by reference herein paragraphs 1 through 26 of Count I and paragraph 28 of Count III as paragraphs 1 through 27 of this Count V.

28. "Effluent" is defined under Section 301.275 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 301.275, as follows:

"Effluent" means any wastewater discharged, directly or indirectly, to the waters of the State or to any storm sewer, and the runoff from land used for the disposition of wastewater or sludges, but does not otherwise include nonpoint source discharges such as runoff from land or any livestock management facility or livestock wastehandling facility subject to regulation under Subtitle E.

29. Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106, provides:

**Offensive Discharges**

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

30. By causing or allowing a point source discharge exhibiting obvious swine waste odor, turbidity, and scum that resulted in the Silkwood Creek exhibiting the same odor, turbidity and scum, Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106.

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents, STROUT CROSSING, LLC, an Illinois Limited Liability Company; JERRY WEBSTER; and, MARK WEBSTER:

A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;

- B. Finding that Respondents have violated the Act as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008), imposing a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

**COUNT VI**

**AGRICULTURE RELATED REGULATIONS VIOLATION**

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 Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2008).

2-26. Complainant re-alleges and incorporates by reference herein paragraphs 2 through 26 of Count I as paragraphs 2 through 26 of this Count VI.

27. Section 501.405(a) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.405(a), provides:

- 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...

28. By applying swine waste on a steep slope and in close proximity to surface waters, namely Silkwood Creek, during a time when rain was imminent, and thereby causing, threatening or allowing water pollution, Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008), and Section 501.405(a) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.405(a).



**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondents, STROUT CROSSING, LLC, an Illinois Limited Liability Company; JERRY WEBSTER; and, MARK WEBSTER:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that Respondents have violated the Act as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008), imposing a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

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: \_\_\_\_\_

THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel

RACHEL R. MEDINA

ARDC#6297171

500 South Second Street

Springfield, Illinois 62706

217/782-9031

Dated: 8/17/11

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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| <b>STROUT CROSSING, LLC,</b>                  | ) |                              |
| <b>an Illinois Limited Liability Company;</b> | ) |                              |
| <b>JERRY WEBSTER; and, MARK WEBSTER,</b>      | ) |                              |
|   | ) |                              |
| <b>Respondent.</b>                            | ) |                              |

**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 Strout Crossing, LLC, an Illinois Limited Liability Company, Jerry Webster, and Mark Webster ("Respondents"), by and through their counsel Schmiedeskamp, Robertson, Neu & Mitchell LLP, ("Parties to the Stipulation"), 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.*, and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a full and final adjudication of this matter.

## I. STATEMENT OF FACTS

### A. Parties

1. Contemporaneously with this Stipulation a Complaint is being 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, against the Respondents, Strout Crossing, LLC, Jerry Webster, and Mark Webster.

2. Respondent, Strout Crossing, LLC, is an Illinois Limited Liability Company that is authorized to transact business in the State of Illinois.

3. Strout Crossing owns and operates a 6,000 head sow operation located at Section 14, Township 7 South, Range 3 West, of the 4th Principal Meridian, in Pike County, Illinois between the cities of Pearl and Nebo ("site"). The site is bordered on the north side by Vin Fiz Highway.

4. JERRY WEBSTER and MARK WEBSTER are in the business of land application of livestock waste and provide land application services for Strout Crossing. JERRY WEBSTER owns the equipment utilized in the business. MARK WEBSTER manages the land application of livestock waste and performed the land application of livestock waste to the 84-acre field located adjacent to and northwest of the sow operation at Strout Crossing that is the subject of this matter.

### B. Allegations of Non-Compliance

Complainant contends that the Respondents have violated the following provisions of the Act and Board regulations:

#### **Count I: Water Pollution Violation**

By causing or allowing the discharge of swine waste, a contaminant, from a land application field into waters of the State so as to cause water pollution, the Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a).

**Count II: Water Pollution Hazard Violation**

By depositing swine waste upon the land in proximity to Silkwood Creek and during a time when rain was imminent so as to create a water pollution hazard, the Respondents violated Section 12(d) of the Act, 415 ILCS 5/12(d).

**Count III: Discharging Without NPDES Permit**

By causing, threatening or allowing the discharge of swine waste from a land application field into Silkwood Creek without an NPDES permit and in violation of the Board's regulations, Respondent, Strout Crossing, LLC, has violated Section 12(f) of the Act, 415 ILCS 5/12(f).

**Count IV: Offensive Conditions**

By applying swine waste to land in such a manner so as to allow a discharge of contaminants which resulted in unnatural color, odor and turbidity in Silkwood Creek, Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

**Count V: Offensive Discharge**

By causing or allowing a point source discharge exhibiting obvious swine waste odor, turbidity, and scum that resulted in the Silkwood Creek exhibiting the same odor, turbidity and scum, Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106.

**Count VI: Agriculture Related Regulations Violation**

By applying swine waste on a steep slope and in close proximity to surface waters, namely Silkwood Creek, during a time when rain was imminent, and thereby causing, threatening or allowing water pollution, Respondents have violated of Section 12(a) of the Act, 415 ILCS 5/12(a), and Section 501.405(a) of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 501.405(a).

**C. No 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, and specifically deny, the allegations of violation within the Complaint and referenced within Section I.B. herein, and this Stipulation shall not be interpreted as including any such admission.

**D. Compliance Activities to Date**

On March 9, 2011, the Respondent, Strout Crossing, LLC, submitted an application for a National Pollution Discharge Elimination Permit ("NPDES") to the Illinois EPA. A Comprehensive Nutrient Management Plan was completed and submitted with the NPDES application to the Illinois EPA.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents 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 Respondents 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.

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

Section 33(c) of the Act, 415 ILCS 5/33(c), 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 the Stipulation state the following:

1. The discharge of livestock waste to waters of the State caused a fish kill and water quality degradation in Silkwood Creek.
2. The Respondents' use of land application is an appropriate method of nutrient management and is an economically beneficial use of sow operation waste.
3. Notwithstanding the inappropriate land application of waste within 200 feet of surface waters, the sow operation and land application of waste was suitable for the general area in which it occurred.
4. Land applying the waste at agronomic rates and according to regulation is both technically practicable and economically reasonable.
5. Respondents have subsequently complied with the Act and Board Regulations.

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

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

1. The violation occurred on August 6, 2008. Livestock waste reached waters of the State, causing water pollution and a fish kill.
2. Respondents were diligent in attempting to come back into compliance with the Act and Board regulations, once the Illinois EPA notified it of its noncompliance.
3. The Respondents did not receive an economic benefit from noncompliance.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of six thousand five hundred dollars (\$6,500.00) 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. The Respondents did not notify the Illinois EPA of the discharge of waste to waters of the State.
7. The settlement of this matter does not include a supplemental environmental project.

**V. TERMS OF SETTLEMENT**

**A. Penalty Payment**

The Respondents shall collectively pay a civil penalty in the sum of Six Thousand Five Hundred Dollars (\$6,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

**B. Interest and Default**

1. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents 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, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents 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:



Rachel R. Medina, AAG  
Environmental Enforcement Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

1. Respondents shall report all releases of livestock waste at and from the facility and land application fields, pursuant to 35 Ill. Adm. Code Part 580.

2. Within 30 days of receipt of any request for additional information from the Illinois EPA concerning the NPDES application submitted on March 9, 2011, Strout Crossing shall provide the requested information.

3. Land application:

a. Respondents shall cease and desist from all land applications within 200 feet of any surface water. Respondents shall maintain a vegetative strip of 200 feet or greater between land application areas and any surface water.

b. Respondents shall cease and desist the application of livestock waste to saturated soils and when precipitation is imminent and apparent. Respondents shall apply livestock waste at or below agronomic rates to suitable ground such as pasture, hay or row crop ground where the crop being grown can uptake and utilize the available nutrients and in a manner that avoids applying livestock waste at rates that exceed the hydraulic capacity of the soil and/or cause runoff.

c. Respondents shall properly apply livestock waste in accordance with 35 Ill. Admin. Code Part 560.

4. 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.

5. The Respondents 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 Respondents' payment of the \$6,500.00 penalty, its commitment to comply with future compliance requirements as contained in Section V.D above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents 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 contemporaneously with this Stipulation. 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 Respondent.

**F. Enforcement and Modification of Stipulation**

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.

**G. Execution of Stipulation**

The undersigned representatives for the Parties to the 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 the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

AGREED:

PEOPLE OF THE STATE OF ILLINOIS,

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

LISA BONNETT, Interim Director  
Illinois Environmental Protection Agency

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

BY:



THOMAS DAVIS, Chief  
Environmental Bureau

BY:



JOHN J. KIM  
Chief Legal Counsel

DATE:

8/17/11

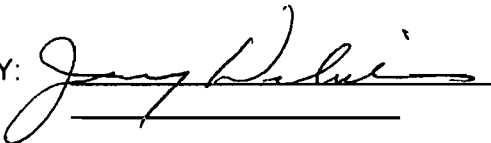
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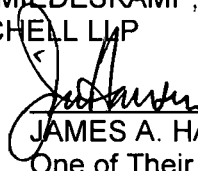
STROUT CROSSING, LLC

SCHMIEDESKAMP, ROBERTSON, NEU & MITCHELL LLP

BY:



BY:



JAMES A. HANSEN  
One of Their Attorneys

DATE:

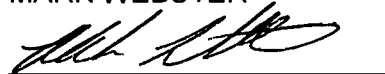
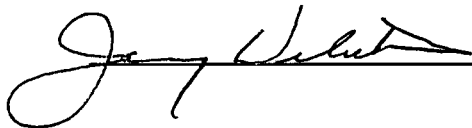
Aug 3 - 2011

DATE:

8/3/11

JERRY WEBSTER

MARK WEBSTER



DATE:

Aug 3 2011

DATE:

8-3-11