

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No.
)	(Enforcement - Water)
ALTON IRRIGATION, INC., an Illinois)	
corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on January 3, 2012, 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: January 3, 2012

CERTIFICATE OF SERVICE

I hereby certify that I did on January 3, 2012, 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

Alton Irrigation, Inc.
an Illinois corporation
c/o Richard J. Alton
President & Registered Agent
8096 Luther Road
Rock Falls, IL 61071

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
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vs.)	PCB No.
)	(Enforcement - Water)
ALTON IRRIGATION, INC., an Illinois)	
corporation,)	
)	
Respondent.)	

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) (2010), 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) (2010). 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) (2010).

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) (2010).

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: January 3, 2012

4. ALTON IRRIGATION, INC. ("Alton Irrigation") is a registered Illinois corporation. RICHARD J. ALTON, 8096 Luther Road, Rock Falls, IL 61071, is the President and registered agent for Alton Irrigation, Inc.

5. Alton Irrigation is an irrigation equipment supply and service business. Alton Irrigation performs the land application of livestock waste for the William DuBois Swine Farm ("DuBois Farm").

6. The DuBois Farm is located at 23219 West Nightingale Road, Millbrook Township, Peoria County, Illinois ("site"). The DuBois Farm is approximately two miles south of the Spoon River and within the watershed of the Spoon River.

7. The DuBois Farm is a wean to finish operation with approximately 2000 head of swine. The DuBois Farm includes facilities which are located on the north side of Nightingale Road, a swine waste lagoon which is located north of those facilities, and a newer swine confinement building which contains an 8 foot deep manure storage pit. The confinement building is located in an area northeast of the swine waste lagoon.

8. Immediately west of the DuBois Farm facilities and extending north from Nightingale Road is a grass waterway ("waterway"). The waterway discharges to an unnamed tributary ("unnamed tributary") to the Spoon River. The unnamed tributary flows in a northerly direction under Lorange Road. At approximately one-quarter mile north of Lorange Road the unnamed tributary is joined by a slightly larger stream ("larger unnamed tributary").

9. A field tile hole is located in the waterway just northwest of the swine waste lagoon ("northwest tile hole"). On information and belief, the northwest tile hole is a conduit to the westerly tile outlet ("tile outlet") of a headwall structure which is located towards the northerly end of the waterway and discharges to the unnamed tributary.

10. On November 23, 2009 at 5:49 p.m., the Illinois Emergency Management Agency ("Illinois EMA") received a report from Richard Alton of Alton Irrigation that 5,000 gallons

of liquid hog manure was released on November 22, 2009 at 10:00 p.m. to an unnamed ditch at 23219 West Nightingale Road, Laura, IL, due to a hose coupling failure.

11. On November 24, 2009, in response to the release report received by the Illinois EMA, the Illinois EPA inspected the DuBois Farm.

12. On November 24, 2009, a flexible, manure supply hose (approximately 6 inches in diameter) was positioned in the waterway. Swine manure was accumulated in an eroded channel in the center of the waterway. In addition, swine manure and foam was accumulated at a point approximately 50 to 75 yards north of Nightingale Road and extended in the waterway north to a muddy area just northwest of the swine waste lagoon.

13. On November 24, 2009, the Illinois EPA inspector spoke with Richard Alton of Alton Irrigation who indicated that at on the evening of November 22, 2009 a shift change occurred for Alton Irrigation employees. Richard Alton also indicated that day shift employees did not communicate to the night shift employees that the manure supply hoses had been disconnected during the process of changing application fields at the time their shift ended. Richard Alton also indicated that the night shift employees discovered a lack of pressure in the line and upon investigation discovered that the manure supply hoses, which were located at a point approximately 500 – 750 feet away from the swine confinement building, were not connected to each other.

14. On November 24, 2009, a liquid sample was collected from liquid swine manure in the grass waterway near the lagoon and just down gradient (north) of the disconnected supply hose. The sample was turbid, darkly colored and had a very strong swine waste odor. The results of Illinois EPA's lab analysis of the sample are as follows: Ammonia, 3330 milligrams per liter ("mg/l"); Phosphorous, 110 mg/l; Suspended Solids, 8740 mg/l; Volatile Solids, 6980 mg/l; and Biochemical Oxygen Demand ("BOD"), >9320 mg/l. The level of BOD was so high as to exceed testing equipment capability.

15. On November 24, 2009, the area where the tile outlet discharges at the concrete headwall structure had foam. A sample taken from the unnamed tributary approximately one-half mile downstream from the concrete headwall structure was turbid and contained a slight swine waste odor. A liquid sample collected from the unnamed tributary just south of Lorange Road was turbid, gray in color and had a swine manure odor. A liquid sample collected from the unnamed tributary just north of Lorange Road was turbid, brown in color, and had a swine manure odor. A liquid sample collected from the unnamed tributary just downstream of its confluence with another small stream had a slight odor.

16. On November 24, 2009, the Illinois Department of Natural Resources, Division of Fisheries ("IDNR"), conducted a fish kill investigation in the unnamed tributary and Spoon River ("fish kill investigation"). The kill area was determined to be 1.63 miles in length. The upper limit of the fish kill was determined to be located immediately below the concrete structure where the tile outlet discharges to the unnamed tributary. The lower limit of the fish kill was determined to be located at the confluence of the unnamed tributary and the larger unnamed tributary. The estimated total number of fish killed was 2,207 and included stoneroller, bluntnose minnow, creek chub, southern redbelly dace, blacknose dace, white sucker, fathead minnow, green sunfish, bluegill, smallmouth bass, sand shiner, orange throat darter, and johnny darter.

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 Respondent is a "person" 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 Spoon River, the waterway, the unnamed tributary, and the larger unnamed tributary 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 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 failing to reconnect the hoses, the Respondent caused the manure hose to drain liquid swine waste into the waterway and the northwest tile hole.

27. 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 Respondent, ALTON IRRIGATION, INC.:

- 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 II

WATER POLLUTION HAZARD VIOLATIONS

1-27. Complainant realleges and incorporates by reference herein paragraphs 1 through 27 of Count I as paragraphs 1 through 27 of this Count II.

28. 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.

29. The Respondent has caused or allowed swine waste, a contaminant, to be deposited upon the land in proximity to the unnamed tributary to the Spoon River so as to create a water pollution hazard to the unnamed tributary and the Spoon River.

30. By depositing contaminants upon the land in such a place and manner so as to create a water pollution hazard, the Respondent has 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 Respondent, ALTON IRRIGATION, INC.:

- 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 III

OFFENSIVE CONDITIONS

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

28. 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.

29. On or about November 24, 2009, a discharge from the Respondent's land application activities at the DuBois Farm caused the waterway and unnamed tributary to the Spoon River to have unnatural color, odor and turbidity.

30. By conducting land application activities in such a manner so as to allow a discharge of liquid swine waste which resulted in unnatural color, odor and turbidity in the waterway and the unnamed tributary to the Spoon River, Respondent 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 Respondent, ALTON IRRIGATION, INC.:

- 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

DEATH OF FISH OR AQUATIC LIFE

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).

2-27. Complainant realleges and incorporates by reference herein paragraphs 2 through 27 of Count I as paragraphs 2 through 27 of this Count IV.

28. The IDNR fish kill investigation report of the unnamed tributary of the Spoon River, dated November 25, 2009, indicates that the 2,207 fish killed had a value of \$274.88 and that expenses to investigate the fish kill amounted to \$787.34.

29. Section 42(c) of the Act, 415 ILCS 5/42(c) (2002), provides, in pertinent part:

- c. Any person that violates this Act, or an order or other determination of the Board under this Act and causes the death of fish or aquatic life shall, in addition to the other penalties provided by this Act, be liable to pay to the State an additional sum for the reasonable value of the fish or aquatic life destroyed. Any money so recovered shall be placed in the Wildlife and Fish Fund in the State Treasury.

30. By causing or allowing the discharge of liquid swine waste from the site into waters of the State so as to cause the death of fish and aquatic life in an estimated 1.63 miles or more of the unnamed tributary of the Spoon River, Defendants are liable for the reasonable value of the fish and aquatic life destroyed pursuant to Section 42(c) of the Act, 415 ILCS 5/42(c).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, ALTON IRRIGATION, INC.:

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. Find that the Respondent is liable for the reasonable value of the fish and aquatic life destroyed due to the discharge of liquid hog manure from the site into waters of the State that resulted in the death of fish and aquatic life in approximately 1.63 miles of the unnamed tributary of the Spoon River pursuant to Section 42(c) of the Act, 415 ILCS 5/42(c);

E. Pursuant to Section 42(c) of the Act, 415 ILCS 5/42(c) (2008), assess the Respondent the reasonable value of the fish and aquatic life destroyed due to the discharge

from their facility, and order that such amount be paid to the Wildlife and Fish Fund in the State Treasury; and,

F. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

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

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

BY: _____

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel

RACHEL R. MEDINA

#6297171

500 South Second Street

Springfield, Illinois 62706

217/782-9031

Dated: 1/03/12

o

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 (2010).

3. At all times relevant to the Complaint, Respondent was and is a registered Illinois corporation that is authorized to transact business in the State of Illinois. Richard J. Alton, 8096 Luther Road, Rock Falls, IL 61071, is the President and registered agent for Alton Irrigation, Inc.

4. The Respondent is an irrigation equipment supply and service business. At all times relevant to the Complaint, the Respondent performed the land application of livestock waste for the William DuBois Swine Farm ("DuBois Farm").

5. The DuBois Farm is located at 23219 West Nightingale Road, Millbrook Township, Peoria County, Illinois ("site"). The DuBois Farm is approximately two miles south of the Spoon River and within the watershed of the Spoon River.

B. Allegations of Non-Compliance

Complainant contends that the Respondent has 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 have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

Count II: Water Pollution Hazard Violation

By depositing contaminants upon the land in such a place and manner so as to create a water pollution hazard, the Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2010).

Count III: Offensive Conditions

By conducting land application activities in such a manner so as to allow a discharge of liquid swine waste which resulted in unnatural color, odor and turbidity in the waterway and the unnamed tributary to the Spoon River, Respondent 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 IV: Death of Fish or Aquatic Life

By causing or allowing the discharge of liquid swine waste from the site into waters of the State so as to cause the death of fish and aquatic life in an estimated 1.63 miles or more of the unnamed tributary of the Spoon River, Defendants are liable for the reasonable value of the fish and aquatic life destroyed pursuant to Section 42(c) of the Act, 415 ILCS 5/42(c) (2010).

C. Non-Admission of Violations

The Respondent represents that it has 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 Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

The Respondent has implemented an employee instruction and site/equipment inspection protocol for the purpose of preventing similar accidents in the future.

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 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.

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 tributaries to the Spoon River.
2. The Respondent's use of land application is an appropriate method of nutrient management and is an economically beneficial use of sow operation waste.
3. Provided the land application of livestock waste is carried out according to regulation, land application of livestock waste is suitable for the general area in which it occurred.
4. Land applying livestock waste according to regulation is both technically practicable and economically reasonable.
5. Respondent has subsequently complied 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), 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 violations occurred on November 22-24, 2009. Livestock waste reached waters of the State causing water pollution and a fish kill.
2. The Respondent initially delayed notifying IEPA of the spill and remediating the contaminated stream for several hours. Following the initial delay, Respondent pumped out a contaminated area of the stream and cleaned the grass waterway. The Respondent also initiated an employee educational program and inspection protocol and purchased double-lined hose for crossing creeks to prevent future violations.
3. The spill was inadvertent with no obvious economic benefit to the Respondent.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Ten Thousand Dollars (\$10,000.00), plus One Thousand Sixty-Two Dollars and Twenty-Two Cents (\$1,062.22) in remuneration to the Wildlife and Fish Fund of the State Treasury for the reasonable value of the fish destroyed, will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.

6. The Respondent reported the discharge of waste approximately 20 hours following the release instead of upon discovery of the discharge 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

1. The Respondent shall pay a civil penalty in the sum of Ten Thousand Dollars (\$10,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent shall also pay \$1,062.22 to the Wildlife and Fish Fund in the State Treasury for the reasonable value of the fish destroyed within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. 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, including reasonable attorney's fees.

2. 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

The civil penalty 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 remuneration for the reasonable value of fish destroyed shall be made by certified check or money order payable to the Illinois Department of Natural Resources for deposit into the Wildlife and Fish Fund ("WFF"). Payments shall be sent by first class mail and delivered to:

Attn: Legal Office
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271

The name, case number and the Respondent's federal tax identification number shall appear on the face of each 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 Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. Respondents shall promptly report and remediate all releases of livestock waste, which occurs as a result of Respondent's land application services, in accordance with 35 Ill. Adm. Code Part 580.

2. Land application:

a. Respondent shall cease and desist the application of livestock waste to saturated soils and when precipitation is imminent and apparent. Respondent 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.

b. Respondent shall properly apply livestock waste in accordance with 35 Ill. Admin. Code Part 560.

3. 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.

4. 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 \$10,000.00 penalty, its commitment to cease and desist as contained in Section V.D. above, 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 contemporaneously with this Stipulation. 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 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.

PEOPLE OF THE STATE OF ILLINOIS,

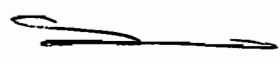
LISA MADIGAN
Attorney General
State of Illinois

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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


BY: 
JOHN J. KIM, Interim Director

DATE: 12/22/11

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 12/19/11

ALTON IRRIGATION, INC.

BY: 
RICHARD ALTON
President

DATE: 12/9/11