

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 10-84
)	(Enforcement)
PROFESSIONAL SWINE)	
MANAGEMENT, LLC, an Illinois limited)	
liability corporation, and HILLTOP VIEW,)	
LLC, an Illinois limited liability corporation,)	
WILDCAT FARMS, LLC, an Illinois limited)	
liability corporation, HIGH-POWER PORK,)	
LLC, an Illinois limited liability corporation,)	
EAGLE POINT FARMS, LLC, an Illinois)	
Limited liability corporation, LONE)	
HALLOW, LLC, an Illinois limited liability)	
corporation, TIMBERLINE, LLC, an Illinois)	
limited liability corporation, PRAIRIE)	
STATE GILTS, LTD, an Illinois)	
corporation LITTLE TIMBER, LLC, an)	
Illinois limited liability corporation,)	
)	
Respondents.)	

NOTICE OF FILING

TO: Mr. John T. Therriault
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9276
(VIA U.S. MAIL)

(PLEASE SEE ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board EAGLE POINT FARMS, LLC'S ANSWER TO

COMPLAINANT'S SECOND AMENDED COMPLAINT and RESPONDENT EAGLE POINT FARMS, LLC'S MOTION TO SEVER, copies of which are herewith served upon you.

Respectfully submitted,

EAGLE POINT FARMS, LLC,

Respondents,

Dated: June 17, 2013

By: /s/ Edward W. Dwyer
One of Its Attorneys

Edward W. Dwyer, #6197577
Jennifer M. Martin, #6210218
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

I, Edward W. Dwyer, the undersigned, hereby certify that I have served the attached EAGLE POINT, LLC'S ANSWER TO COMPLAINANT'S SECOND AMENDED COMPLAINT and RESPONDENT EAGLE POINT, LLC'S MOTION TO SEVER upon:

Mr. John T. Therriault
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on June 17, 2013; and upon:

Ms. Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274

Jane E. McBride, Esq.
Assistant Attorney General
Office of the Attorney General
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by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois, on June 17, 2013.

/s/Edward W. Dwyer
Edward W. Dwyer

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Respondents.)	

**EAGLE POINT FARMS, LLC'S ANSWER
TO COMPLAINANT'S SECOND AMENDED COMPLAINT**

NOW COMES Respondent, EAGLE POINT FARMS, LLC, an Illinois Corporation (hereinafter referred to as "Eagle Point"), by and through its attorneys, HODGE DWYER & DRIVER, pursuant to 35 Ill. Admin. Code § 103.204(d), and hereby submits its Response to Complainant's Second Amended Complaint ("Complaint") as follows:

COUNT I

WATER POLLUTION VIOLATIONS – HILLTOP VIEW, SCHUYLER COUNTY

ANSWER: With respect to paragraphs 1-46 of Count I, Eagle Point provides no response because the allegations of Count I are directed toward another party. To the extent that Count I contains any allegations directed toward Eagle Point, Eagle Point denies the same.

COUNT II

WATER POLLUTION VIOLATIONS – WILDCAT FARMS, HANCOCK COUNTY

ANSWER: With respect to paragraphs 1-41 of Count II, Eagle Point provides no response because the allegations of Count II are directed toward another party. To the extent that Count II contains any allegations directed toward Eagle Point, Eagle Point denies the same.

COUNT III

WATER POLLUTION VIOLATIONS – HIGH-POWER PORK, ADAMS COUNTY

ANSWER: With respect to paragraphs 1-39 of Count III, Eagle Point provides no response because the allegations of Count III are directed toward another party. To the extent that Count III contains any allegations directed toward Eagle Point, Eagle Point denies the same.

COUNT IV

WATER POLLUTION VIOLATIONS - EAGLE POINT FARMS,

FULTON COUNTY

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

ANSWER: Eagle Point admits the allegations of paragraph 1.

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, and which is charged, *inter alia*, with the duty of enforcing the Act.

ANSWER: Eagle Point admits the allegations of paragraph 2.

3. The Respondent EAGLE POINT FARMS, LLC ("Eagle Point") is and was at all times relevant to this Complaint an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Eagle Point is Gary L. Donley, 303 N. Second St., POB 220, Carthage, IL 62321.

ANSWER: Eagle Point admits the allegations of paragraph 3.

4. Respondent Eagle Point owns a farrow-to-wean facility with a design capacity of 6,500 sows located approximately 2 miles northeast of Vermont, IL and approximately 3 miles southeast of Table Grove, in Vermont Township, Fulton County. The legal description is SW 1/4 of Section 15, T4N, R1E. (The "Eagle Point site" or "Eagle Point facility"). Breeding stock, i.e. sows, weigh over 55 pounds. Drainage from

the Eagle Point site flows directly through several ravines into final cut strip mine lakes.

ANSWER: Eagle Point denies the allegations of paragraph 4. Eagle Point affirmatively states that it owns a farrow-to-wean facility with a design capacity of 6,400 sows located in Sections 15 and 16 of Vermont Township, Fulton County, Illinois and is referred to as Eagle Point Farm LLC.

5. The Respondent PROFESSIONAL SWINE MANAGEMENT, LLC ("PSM") is and was at all times relevant to this Complaint, an Illinois limited liability corporation, registered and in good standing with the Illinois Secretary of State to do business in Illinois. The registered agent for Respondent PSM is Gary L. Donley, 303 N. Second St., POB 220, Carthage, IL 62321.

ANSWER: Eagle Point admits the allegations of paragraph 5.

6. Respondent PSM manages Eagle Point's operations and the physical site.

ANSWER: Eagle Point admits that, in accordance with an agreement between it and Respondent PSM, PSM provides management services to Eagle Point for the Eagle Point facility. Eagle Point denies the remaining factual allegations of paragraph 6.

7. The Eagle Point facility consists of five total confinement buildings that house swine. The isolation building has below ground, two-foot-deep pull-plug waste storage pits. From the isolation building 2 foot pits, waste is diverted to the 10-foot-deep pits below the gilt grow/finish building. The farrowing building has below ground, two-foot-deep pull-plug waste storage pits. From the farrowing building 2 foot pits, waste is diverted to the 10-foot-deep pits below the gestation buildings. The gilt grow/finish building, and north and south gestation buildings have below ground, 10-foot-deep waste storage pits. Waste is agitated in the pits prior to it being pumped for land application.

ANSWER: Eagle Point admits the allegations of paragraph 7.

8-28. Plaintiff re-alleges and incorporates by reference herein paragraphs 8 through 28 of Count II as paragraphs 8 through 28 of this Count IV.

8. Section 3.165 of the Act, 415 ILCS 5/3.165, provides:

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

ANSWER: The statutory section cited in paragraph 8 speaks for itself and requires no response.

9. Section 3.545 of the Act, 415 ILCS 5/3.545, provides the following definition:

“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.

ANSWER: The statutory section cited in paragraph 9 speaks for itself and requires no response.

10. Section 3.550 of the Act, 415 ILCS 5/3.550, provides the following definition:

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

ANSWER: The statutory section cited in paragraph 10 speaks for itself and requires no response.

11. Section 12 of the Act, 415 ILCS 5/12, provides the following prohibitions:

No person shall:

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

* * *

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

* * *

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

No permit shall be required under this subsection and under Section 39(b) of this Act for any discharges for which a permit is not required under the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto.

ANSWER: The statutory section cited in paragraph 11 speaks for itself and requires no response.

12. Section 309.102(a) of the Board's Water Pollution Regulations, 35. Ill.

Adm. Code 309.102(a), provides:

Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State

from a point source or into a well shall be unlawful.

ANSWER: The regulatory section cited in paragraph 12 speaks for itself and requires no response.

13. Section 502.101 of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 502.101, provides:

No person specified in Sections 502.102, 502.103 or 502.104 or required to have a permit under the conditions of Section 502.106 shall cause or allow the operation of any new livestock management facility or livestock waste-handling facility, or cause or allow the modification of any livestock management facility or livestock waste-handling facility, or cause or allow the operation of any existing livestock management facility or livestock waste-handling facility without a National Pollutant Discharge elimination System ("NPDES") permit. Facility expansions, production increases, and process modifications which significantly increase the amount of livestock waste over the level authorized by the NPDES permit must be reported by submission of a new NPDES application.

ANSWER: The regulatory section cited in paragraph 13 speaks for itself and requires no response.

14. Section 502.103 of the Board's Agriculture Related Regulations, 35 Ill. Adm. Code 501.103, provides:

Very Large Operations

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

* * *

2,500 Swine weighing over 55 pounds

* * *

1,000 Animal units

ANSWER: The regulatory section cited in paragraph 14 speaks for itself and requires no response.

15. Section 502.104 of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 502.104, provides:

Large Operations

- a) An NPDES permit is required if more than the following numbers and types of animals are confined and either condition (b) or (c) below is met:

* * *

750 Swine weighing over 55 pounds

- b) Pollutants are discharged into navigable waters through a man-made ditch, flushing system, or other similar man-made devices; or
- c) Pollutants are discharged directly into navigable waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

ANSWER: The regulatory section cited in paragraph 15 speaks for itself and requires no response.

16. Section 502.106 of the Board's Agriculture Related Pollution Regulations, 35 Ill. Adm. Code 502.106, provides:

- a) Notwithstanding any other provision of this Part, the Agency may require any animal feeding operation not falling within Sections 502.201, 502.103 or 502.104 to obtain a permit. In making such designation the Agency shall consider the following facts:
- 1) The size of the animal feeding operation and the amount of wastes reaching navigable waters;
 - 2) The location of the animal feeding operation relative to navigable waters;
 - 3) The means of conveyance of animal wastes and process wastewaters into navigable waters;

- 4) The slope, vegetation, rainfall and other factors relative to the likelihood or frequency of discharge of animal wastes and process wastewaters into navigable waters; and
 - 5) Other such factors bearing on the significance of the pollution problem sought to be regulated.
- b) The Agency, however, may not require a permit under paragraph a) for any animal feeding operation with less than the number of animal units (300) set forth in Section 502.104 above, unless it meets either of the following conditions:
- 1) Pollutants are discharged into navigable waters through a man- made ditch, flushing system, or other similar man-made devices; or
 - 2) Pollutants are discharged directly into navigable waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

ANSWER: The regulatory section cited in paragraph 16 speaks for itself and requires no response.

17. Section 122.21, 40 CFR 122.21, provides, in pertinent part, as follows:

Application for a permit (applicable to State programs see Section 123.25)

(a) *Duty to apply.*

- (1) Any person who discharges . . . pollutants . . . must submit a complete application to the Director in accordance with this section and part 124 of this chapter. The requirements for concentrated animal feeding operations are described in Section 122.23.(d).

ANSWER: The regulatory section cited in paragraph 17 speaks for itself and requires no response.

18. Section 122.23, 40 CFR 122.23, provides, in pertinent part, as follows

Concentrated animal feeding operations

(A) *Scope*. Concentrated animal feeding operations (“CAFOs”), as defined in paragraph (b) of this section or designated in accordance with paragraph (c) of this section, are point sources, subject to NPDES permitting requirements as provided in this section. Once an animal feeding operation is defined as a CAFO for at least one type of animal, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

ANSWER: The regulatory section cited in paragraph 18 speaks for itself and requires no response.

19. Section 122.23 (b)(1), 40 CFR 122.23(b)(1), provides, in pertinent part:

(b) Definitions applicable to this section:

(1) *Animal feeding operation* (“AFO”) means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

ANSWER: The regulatory section cited in paragraph 19 speaks for itself and requires no response.

20. Section 122.23(b)(2), 40 CFR 122.23(b)(2), provided, in pertinent part:

(2) *Concentrated animal feeding operation* (“CAFO”) means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph, or that is designated as a CAFO in accordance with paragraph (c) of this section. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

ANSWER: The regulatory section cited in paragraph 20 speaks for itself and requires no response.

21. Section 122.23 (b)(3), 40 CFR 122.23(b)(5), provides, in pertinent part:

- (3) The term *land application area* means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production are is or may be applied.

ANSWER: The regulatory section cited in paragraph 21 speaks for itself and requires no response.

22. Section 122.23 (b)(4), 40 CFR 122.23(b)(4), provides, in pertinent part:

- (4) *Large concentrated animal feeding operation* ("Large CAFO"), An AFO is defined as a Large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

* * *

- (iv) 2,500 swine each weighing 55 pounds or more,

* * *

ANSWER: The regulatory section cited in paragraph 22 speaks for itself and requires no response.

23. Section 122.23 (b)(5), 40 CFR 122.23(b)(5), provides, in pertinent part:

- (5) The term *manure* is defined to include manure, bedding, compost and raw materials or other materials comingled with manure or set aside for disposal.

ANSWER: The regulatory section cited in paragraph 23 speaks for itself and requires no response.

24. Section 122.23 (b)(6), 40 CFR 122.23(b)(6), provides, in pertinent part:

- (6) *Medium concentrated animal feeding operation* ("Medium CAFO"). The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the

ranges listed in paragraph (b)(6)(1) of this section and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

- (i) The type and number of animals that it stables or confines falls within any of the following ranges:

* * *

- (D) 750 to 2,499 swine each weighing 55 pounds or more,

* * *

- (ii) Either one of the following conditions are met:
 - (A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made devices; or
 - (B) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

ANSWER: The regulatory section cited in paragraph 24 speaks for itself and requires no response.

25. Section 122.23 (b)(7), 40 CFR 122.23(b)(1), provides, in pertinent part:

- (7) *Process wastewater* means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding

ANSWER: The regulatory section cited in paragraph 25 speaks for itself and

requires no response.

26. Section 122.23 (b)(8), 40 CFR 122.23(b)(1), provides, in pertinent part:

- (8) *Production area* means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any eff washing or egg processing facility, and any area used in the storage, handling, treatment or disposal of mortalities.

ANSWER: The regulatory section cited in paragraph 26 speaks for itself and requires no response.

27. Section 122.23 (c), 40 CFR 122.23(c), provides, in pertinent part:

- (c) *How may an AFO be designated as a CAFO?* The appropriate authority (i.e. State Director or Regional Administrator, or both, as specified in paragraph (c) (1) of this section) may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the United States.
- (2) In making this designation, the State Director or the Regional Administrator shall consider the following factors:
- i) The size of the AFO and the amount of wastes reaching waters of the United States;
 - ii) The location of the AFO relative to waters

of the United States;

- iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;
 - iv) The slope, vegetation, rainfall and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the United States; and
 - v) Other relevant factors.
- (3) No AFO shall be designated under this paragraph unless the State Director or the Regional Administrator has conducted an onsite inspection of the operation and determined that the operation should and could be regulated under the permit program. In addition, no AFO with numbers of animals below those established in paragraph (b)(6) of this section may be designated as a CAFO unless:
- (i) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made devices; or
 - (ii) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

ANSWER: The regulatory section cited in paragraph 27 speaks for itself and requires no response.

28. Section 122.23(d) (1), 40 CFR 122.23(d)(1), provides, in pertinent part:

(d) *NPDES permit authorization*

(1) *Permit requirement.* A CAFO must not discharge

unless the discharge is authorized by an NPDES permit. In order to obtain authorization under an NPDES permit, the CAFO owner or operator must either apply for an individual NPDES permit or submit a notice of intent for coverage under an NPDES general permit.

ANSWER: The regulatory section cited in paragraph 28 speaks for itself and requires no response.

29. Section 905.100 of the Illinois Private Sewage Disposal Code, 77 Ill.

Adm. Code 905.100, states in pertinent part:

Effluent Discharges

a) General. Buried sand filters, recirculating sand filters, waste stabilization ponds, and aerobic treatment plants listed by NSF for Class I effluent (See Section 905.100 (a) and ©) may be discharged to any one of the following 3 options:

1) A receiving stream, river, lake, or pond which provides greater than a 5 to 1 dilution of the effluent, based on the 7 day, 10 year low flow rate. A discharge within 10 feet of the above shall be considered to be a discharge to the receiving body of water. . . .

* * *

D) Effluent Standards

1) All surface discharges from private sewage disposal systems shall comply with United States Environmental Protection Agency Secondary Treatment Guidelines for BOD₅ and Suspended Solids:

A) BOD₅
i) Arithmetic mean of all effluent samples collected in a period of 30 consecutive days; 30 mg/l and 85 percent removal;

- ii) Arithmetic means of all effluent samples collected in a period of 7 consecutive days; 45 mg/l

* * *

- F) A fecal coliform bacteria concentration not exceeding 400 organisms per 100 ml except where chlorination is not required.

ANSWER: The regulatory section cited in paragraph 29 speaks for itself and requires no response.

30. On May 10, 2007, the Illinois EPA inspected the Eagle Point facility. At the time of the inspection, there was a discharge from the north gestation building perimeter tile onto the land in a manner in which the discharge drained into a strip mine lake. The discharge was slightly cloudy and had a slight livestock waste odor. Analysis of a sample collected from the discharge indicates a fecal coliform level of 35,000 per 100 milliliters ("ml").

ANSWER: Eagle Point admits that an inspection took place on May 10, 2007. Eagle Point has insufficient knowledge to either admit or deny the remaining allegations of paragraph 30, and therefore denies these allegations.

31. At the time of the inspection, the Illinois EPA inspector sampled a discharge from the facility's private sewage disposal system, that being an aerated septic tank that serves the office restrooms and showers. This system discharges through a 4-inch diameter line into a lake located east of the facility structures. At the time of the inspection, the discharge was slightly turbid and had a septic odor. The sample analysis results indicated a fecal coliform level of 56,000 per 100 ml, and ammonia level of 41.8 mg/l, and a biological oxygen demand level of 48 mg/l. The septic tank discharge was

through a pipe into a lake.

ANSWER: Eagle Point admits that there is a septic system present at the Eagle Point facility. Eagle Point has insufficient knowledge to either admit or deny the remaining allegations of paragraph 31, and therefore denies these allegations.

32. The strip mine lake that was the receiving water of the discharges is tributary to Otter Creek, a perennial stream that flows into the Illinois River. As such, the May 10, 2007 discharges were discharges to waters of the United States.

ANSWER: Eagle Point has insufficient knowledge to either admit or deny the allegations of paragraph 30, and therefore denies these allegations. Further the last sentence of paragraph 32 states a legal conclusions that require no response. To the extent that paragraph 32 states any other allegations of fact, Eagle Point denies the same.

33. Respondents Eagle Point and PSM have caused or allowed the discharge of contaminants to waters of the State at the Eagle Point site as will or is likely to create a nuisance or render such water harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses.

ANSWER: The allegations of paragraph 33 state legal conclusions that require no response. To the extent that paragraph 33 states any allegations of fact, Eagle Point denies the same. To the extent that the allegations of paragraph 33 are directed toward PSM, Eagle Point has insufficient knowledge to either admit or deny the allegations of paragraph 33 as to PSM.

34. By causing, allowing or threatening the discharge of contaminants to waters of the State at the Eagle Point site so as to cause or tend to cause water pollution

in Illinois, Respondents Eagle Point and PSM have violated Section 12(a) of the Act, 415 ILCS 5/12(a).

ANSWER: The allegations of paragraph 34 state legal conclusions that require no response. To the extent that paragraph 34 states any allegations of fact, Eagle Point denies the same. To the extent that the allegations of paragraph 34 are directed toward PSM, Eagle Point has insufficient knowledge to either admit or deny the allegations of paragraph 34 as to PSM.

35. Respondents Eagle Point and PSM have caused or allowed contaminants to be deposited upon the land in such place and manner as to create a water pollution hazard by causing contaminants to remain on the land and subject to surface drainage or leaching into waters of the State.

ANSWER: The allegations of paragraph 35 state legal conclusions that require no response. To the extent that paragraph 35 states any allegations of fact, Eagle Point denies the same. To the extent that the allegations of paragraph 35 are directed toward PSM, Eagle Point has insufficient knowledge to either admit or deny the allegations of paragraph 35 as to PSM.

36. By depositing contaminants upon the land in such place and manner as to create a water pollution hazard at the Eagle Point site, Respondents Eagle Point and PSM have violated Section 12(d) of the Act, 415 ILCS 5/12(d).

ANSWER: The allegations of paragraph 36 state legal conclusions that require no response. To the extent that paragraph 36 states any allegations of fact, Eagle Point denies the same. To the extent that the allegations of paragraph 36 are directed toward PSM, Eagle Point has insufficient knowledge to either admit or deny the allegations of

paragraph 36 as to PSM.

37. At the time of May 10, 2007 discharge to a strip mine lake, Respondents Eagle Point and PSM did not have a NPDES permit for the Eagle Point facility, nor had the Respondents applied for one. The discharge from the perimeter tile at the Eagle Point facility was a point source discharge.

ANSWER: Eagle Point admits the allegations of paragraph 37 solely with regard to the allegation that Eagle Point did not have a NPDES permit on May 10, 2007. Eagle Point affirmatively states that it was not and is not required to have an NPDES permit. The remaining allegations of paragraph 37 state legal conclusions that require no response. To the extent that the remaining allegations of paragraph 37 state any allegations of fact, Eagle Point denies the same. To the extent that the allegations of paragraph 37 are directed toward PSM, Eagle Point has insufficient knowledge to either admit or deny the allegations of paragraph 37 as to PSM.

38. By causing or allowing the discharge of livestock wastewater to waters of the United States without an NPDES permit, Respondents Eagle Point and PSM have violated 12(f) of the Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

ANSWER: The allegations of paragraph 38 state legal conclusions that require no response. To the extent that paragraph 38 states any allegations of fact, Eagle Point denies the same. To the extent that the allegations of paragraph 38 are directed toward PSM, Eagle Point has insufficient knowledge to either admit or deny the allegations of paragraph 38 as to PSM.

PRAYER FOR RELIEF

WHEREFORE, Respondent, EAGLE POINT FARMS, LLC, asserts that Complainant is not entitled to the relief sought by Count IV of its Complaint, and prays that Complainant take nothing by Count IV of its Complaint, that the Board enter judgment in favor of EAGLE POINT, LLC as to Count IV of Complainant's Complaint, and that the Board award EAGLE POINT, LLC its costs and all other relief just and proper in the premises.

COUNT V

WATER POLLUTION VIOLATIONS – LONE HOLLOW, HANCOCK COUNTY

ANSWER: With respect to paragraphs 1-39 of Count V, Eagle Point provides no response because the allegations of Count V are directed toward another party. To the extent that Count V contains any allegations directed toward Eagle Point, Eagle Point denies the same.

COUNT VI

WATER POLLUTION VIOLATIONS – TIMBERLINE, SCHUYLER COUNTY

ANSWER: With respect to paragraphs 1-38 of Count VI, Eagle Point provides no response because the allegations of Count VI are directed toward another party. To the extent that Count VI contains any allegations directed toward Eagle Point, Eagle Point denies the same.

COUNT VII

WATER POLLUTION VIOLATIONS – PRAIRIE STATE GILTS, SCHUYLER COUNTY

ANSWER: With respect to paragraphs 1-44 of Count VII, Eagle Point provides no response because the allegations of Count VII are directed toward another party. To the extent that Count VII contains any allegations directed toward Eagle Point, Eagle Point denies the same.

COUNT VIII

WATER POLLUTION VIOLATIONS – LITTLE TIMBER, HANCOCK COUNTY

ANSWER: With respect to paragraphs 1-52 of Count VIII, Eagle Point provides no response because the allegations of Count VIII are directed toward another party. To the extent that Count VIII contains any allegations directed toward Eagle Point, Eagle Point denies the same.

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

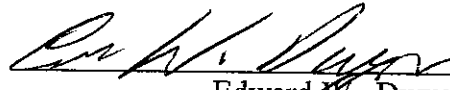
Edward W. Dwyer on oath, deposes and states as follows:

1. That I am one of the attorneys representing the party on whose behalf this Answer was prepared.

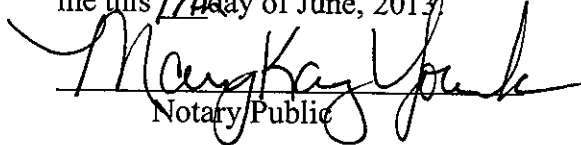
2. That the Answer in paragraphs 30-38 contains certain statements claiming insufficient knowledge upon which to base a belief as to the truth or falsity of the allegations contained in the Complaint.

3. That said allegations of insufficient knowledge are true and correct to the best of his information, knowledge and belief.

FURTHER AFFIANT SAYETH NOT.


Edward W. Dwyer

Subscribed and sworn to before me this 17th day of June, 2013


Notary Public



EAGLE POINT AFFIRMATIVE DEFENSES

1. Preceding the filing of its Complaint, the Complainant failed to comply with Section 31 of the Act's required enforcement procedures. Instead of Section 31, Complainant states that Count IV is merely brought pursuant to Sections 42(d) and (e) of the Act. Accordingly, Count IV fails and must be dismissed due to the Complainant's failure to comply with Section 31 of the Act.

2. Count IV fails to allege facts sufficient to support a finding that Eagle Point is discharging, and thus, required to obtain an NPDES permit. The Complainant's allegations in Count IV that Eagle Point is required to apply for an NPDES permit is based solely upon one isolated event. Because this isolated event is insufficient to establish that Eagle Point is discharging in a manner sufficient to require an NPDES permit, Eagle Point is not required to apply for an NPDES permit.

3. Eagle Point reserves the right to amend its Answer to allege any additional defenses which discovery may reveal to be appropriate.

4. The Complaint does not allege with specificity whether the federal and/or state statutes and regulations cited therein were in effect at the time of the alleged violations.

CONCLUSION

WHEREFORE, Respondent, EAGLE POINT FARMS, LLC, by its attorneys, HODGE DWYER & DRIVER, prays that Complainant take nothing by way of its Complaint, and that the Board award EAGLE POINT FARMS, LLC all relief just and proper in the premises.

Respectfully submitted,

EAGLE POINT FARMS, LLC,

Respondent,

Dated: June 17, 2013

By: /s/ Edward W. Dwyer
One of Its Attorneys

Edward W. Dwyer, #6197577
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HOGS:004/Individual Farm Failings/Eagle Point/Eagle Point Answer to 2 Amend Compl

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 10-84
)	(Enforcement)
PROFESSIONAL SWINE)	
MANAGEMENT, LLC, an Illinois limited)	
liability corporation, and HILLTOP VIEW,)	
LLC, an Illinois limited liability corporation,)	
WILDCAT FARMS, LLC, an Illinois limited)	
liability corporation, HIGH-POWER PORK,)	
LLC, an Illinois limited liability corporation,)	
EAGLE POINT FARMS, LLC, an Illinois)	
Limited liability corporation, LONE)	
HALLOW, LLC, an Illinois limited liability)	
corporation, TIMBERLINE, LLC, an Illinois)	
limited liability corporation, PRAIRIE)	
STATE GILTS, LTD, an Illinois)	
corporation LITTLE TIMBER, LLC, an)	
Illinois limited liability corporation,)	
)	
Respondents.)	

RESPONDENT EAGLE POINT FARMS, LLC'S MOTION TO SEVER

NOW COMES Respondent, EAGLE POINT FARMS, LLC ("Respondent" or "Eagle Point"), by and through its attorneys, HODGE DWYER & DRIVER, and hereby moves the Illinois Pollution Control Board ("Board") to sever the claims in Count IV of the Complaint filed in the above enforcement matter. In support of its Motion, Eagle Point states as follows:

A. Procedural History

1. The State of Illinois (hereinafter the "State") filed its original Complaint in the instant matter on April 15, 2010.

2. Subsequently, a series of motions challenging the sufficiency of the pleadings were filed by multiple Respondents, which resulted in the State amending its Complaint, most recently with its Second Amended Complaint filed on December 13, 2012 (hereinafter "Complaint").

3. On February 11, 2013, all Respondents filed a Joint Motion for Extension of Time to Respond to the Complaint and a Joint Motion to Strike Part of the Complaint's Prayer for Relief.

4. On May 2, 2013, the Board denied Respondents' Joint Motion to Strike Part of the Complaint's Prayer for Relief and directed Respondents to answer the Complaint by June 17, 2013.

5. In light of the Board's decisions regarding the factual and legal arguments raised in the Respondents' motions, as well as the Board's procedural rules, Eagle Point has determined that the filing of this Motion to Sever is necessary.

B. Count IV Against Eagle Point Should Be Severed from the Remaining Counts

6. The Complaint filed by the State in the instant matter contains eight separate counts. Each count alleges violations of the Illinois Environmental Protection Act ("Act") and Board regulations at a different concentrated animal feeding operation ("CAFO") in Illinois.

7. The CAFOs which are the subjects of the separate counts of the Complaint are owned by separate entities. Eagle Point is the owner of the Eagle Point CAFO, which is located in Fulton County, Illinois.

8. No other CAFO subject to this Complaint is located in Fulton County; three of the CAFOs are located in Hancock County (Counts II, V, and VIII), three CAFOs are located in Schuyler County (Counts I, VI, and VII); and one CAFO is located in Adams County (Count III).

9. Moreover, the CAFOs which are the subject of the Complaint are located in two different appellate districts, the Third (Fulton, Hancock) and the Fourth (Adams, Schuyler).

10. The allegations against Eagle Point relate only to the Eagle Point CAFO and are found in Count IV of the Complaint. The allegations against Eagle Point are based on a May 10, 2007 inspection of the Eagle Point CAFO by the Illinois Environmental Protection Agency ("IEPA"). Complaint at 27-28. The Complaint does not allege, and Eagle Point has never received, a Violation Notice regarding the alleged violations.

11. The facts alleged in Count IV of the Complaint do not pertain to, or in any way involve, the seven CAFOs which are the subjects of Counts I through III and V through VIII of the Complaint and are unrelated to the factual allegations in the remaining seven counts of the Complaint. Moreover, Eagle Point is not a respondent with respect to the alleged violations in Counts I through III and V through VIII of the Complaint.

12. The only common issue between Count IV and the other counts of the Complaint is the allegation that Respondent, Professional Swine Management, LLC, manages the Eagle Point CAFO as well as the CAFOs which are the subjects of Counts I through III and V through VIII of the Complaint.

13. Pursuant to Section 41 of the Act, judicial review of enforcement decisions of the Board “shall be afforded directly in the Appellate Court for the District in which the cause of action arose” 415 ILCS 5/41(a).

14. Because the Complaint contains separate counts and allegations, involving CAFOs located in two different appellate districts in Illinois, it will be impossible for any judicial review of the Board’s enforcement decisions to comply with the Act’s mandate that judicial review be afforded in the appellate district where the “cause of action arose” for each CAFO.

15. The Board’s procedural rules provide that hearings in enforcement proceedings “are generally held in the county in which the source or facility is located. . . .” 35 Ill. Admin. Code § 101.600.

16. Because the Complaint contains separate counts and allegations, involving CAFOs located in four different counties in Illinois, any hearing held on the Complaint will not comply with the Board’s procedural rule regarding venue for the majority of the CAFOs which are the subject of the Complaint.

17. Section 2-405 of the Illinois Code of Civil Procedure permits the joinder of defendants who are alleged to have, or claim an interest “in the transaction or series of transactions out of which the controversy arose,” and further provides as follow:

(b) It is not necessary that each defendant be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him or her; but the court may make any order that may be just to prevent any defendant from being embarrassed or put to expense by requiring to attend any proceedings in which such defendant may have no interest.

735 ILCS 5/2-405(b).

18. The Board's procedural rules address joinder of parties (35 Ill. Admin. Code § 101.403), but do not specifically address the joinder of defendants. Therefore, it is appropriate for the Board to look to Section 2-405(b) of the Illinois Code of Civil Procedure (735 ILCS 5/2-405(b)) and cases interpreting the same for guidance in the issue presented by the State's joinder of its claim against Eagle Point with its claims against the multiple, unrelated Respondents named in Counts I through III and V through VIII of the Complaint. 35 Ill. Admin. Code § 101.100(b).

19. The State's Complaint violates the joinder rules set forth in Section 2-405 of the Illinois Code of Civil Procedure because the cause of action against Eagle Point arises from an entirely separate and distinct transaction and set of facts than the causes of action set forth in Counts I through III and V through VIII of the Complaint. *Rogala v. Silva*, 16 Ill. App. 3d 63, 305 N.E.2d 571, 575 (1st Dist. 1973) (affirming severance of counts with one common defendant because counts involved entirely separate transactions, different parties, and different theories); *Sommers v. Korona*, 54 Ill. App. 2d 425, 203 N.E.2d 768, 774 (1st Dist. 1964) (appellate court affirmed dismissal of count in suit against multiple defendants for injuries arising out of separate and unrelated car accidents, noting that plaintiff would not be prejudiced by having to file separate suits); *Preferred Personnel v. Meltzer*, 387 Ill. App. 3d 933, 902 N.E.2d 146, 150 (1st Dist. 2009) (a cause of action against multiple defendants must arise from the same transactions in order to permit joinder of the defendants).

20. The Board's procedural rules provide that:

Upon motion of any party or on the Board's own motion, in the interest of convenient, expeditious, and complete determination of claims, and where no material prejudice will be caused, the Board may sever claims involving any number of parties.

35 Ill. Admin. Code § 101.408.

21. Requiring Eagle Point to participate in the proceedings and hearing on Counts I through III and V through VIII of the Complaint, in which Eagle Point has no interest, will substantially prejudice Eagle Point. In particular, Eagle Point will be forced to devote significant time and resources, including litigation costs, to the proceedings involving Counts I through III and V through VIII, which do not, in any way, involve either Eagle Point or the Eagle Point CAFO. For example, if Count IV is not severed from the remaining counts, Eagle Point could be forced to participate in depositions, discovery, and hearings that are completely unrelated to the allegations of Count IV.¹

22. Moreover, as noted above, there is a strong likelihood that any hearing involving the allegations of Count IV of the Complaint will not be held in Fulton County, in contravention of the Board's procedural rules.

23. The joinder of Eagle Point with the multiple, unrelated Respondents named in Counts I through III and V through VIII of the Complaint violates the rules

¹ Indeed, the State has already served discovery requests that are very broad in nature and not tailored to the claims in Count IV against Eagle Point. For example, in paragraphs 3, 4, and 6 of its First Request for Production of Documents, it seeks records for the last 15 years. The Eagle Point Farm has only been in existence since December 2005, a fact known to the State.

governing joinder of defendants set forth in the Code of Civil Procedure (735 ILCS 5/2-405).²

24. Severing Count IV from the remaining counts of the Complaint, and requiring the State to include the allegations of Count IV in a separate complaint will expedite the resolution of claims involving Eagle Point and the Eagle Point CAFO, and will prevent the inconvenience and prejudice to Eagle Point that will result from requiring it to participate in the discovery, proceedings, and hearing on Counts I through III and V through VIII of the Complaint, in which it has no interest. *See City of Kankakee v. County of Kankakee, et al.*, PCB Nos. 03-125, 03-133, 03-134, 03-135, 03-144 (Consolidated) (Ill.Pol.Control.Bd., April 17, 2003) (Board granted severance of claims against Waste Management, Inc. based on Waste Management, Inc.'s assertion that "the consolidation of the cases does materially prejudice Waste Management, Inc. because of discovery deadlines and potential briefing schedules in the other cases.).

25. Severing Count IV from the remaining counts of the Complaint, and requiring the State to include the allegations of Count IV in a separate complaint will allow the Board to hold any hearing involving the allegations of Count IV in Fulton County, in accordance with the Board's procedural rule governing venue. 35 Ill. Admin. Code § 101.600. Further, it will ensure that the appellate rights of Eagle Point and any other Respondent are not circumscribed by being improperly joined in this case.

² It may well be that the State selected the Board as its forum to seek to file a single complaint against 9 corporations located in 4 different counties, since such filing in a lone Circuit Court would not be possible under the Illinois Code of Civil Procedure's rules regarding venue, *i.e.*, 735 ILCS 5/2-101,102.

WHEREFORE, for the reasons stated above, Respondent Eagle Point respectfully moves the Board to enter an order severing Count IV of the State's Complaint from the remaining counts, and requiring the State to bring Count IV as a separate action, and providing such other relief as the Board deems appropriate.

Respectfully submitted,

EAGLE POINT FARMS, LLC,

Respondent,

Dated: June 17, 2013

By: /s/ Edward W. Dwyer
One of Its Attorneys

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