

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
VERMILION COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Plaintiff,)
)
v.) No. 2015-CH-162
)
GABRIEL SHEPHERD,)
)
Defendant.)

CONSENT ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), the Illinois Department of Natural Resources (“Illinois DNR”), and Defendant, GABRIEL SHEPHERD, (“Parties to the Consent Order”) have agreed to the making of this Consent Order and submit it to this Court for approval.

I. INTRODUCTION

This stipulation is made and agreed upon for purposes of settlement only and as a basis for the Court’s entry of the Consent Order, and issuance of any injunctive relief. None of the matters 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.* (2016), and the Illinois Pollution Control Board (“Board”) Regulations, and liabilities under the Illinois Fish and Aquatic Life Code (“Fish and Aquatic Life Code”), 515 ILCS 5/1 *et seq.* (2014), and common law claims alleged in the Complaint and Amended Complaint except as otherwise provided herein. It is the intent of the parties to this Consent Order that it be a final judgment pursuant to Supreme Court Rule 301.

A. Parties

1. On December 3, 2015, a Complaint was filed, and on June 24, 2016, an Amended Complaint for Injunctive Relief and Civil Penalties was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2016), and upon the request of the Illinois DNR, pursuant to Section 5-5 of the Fish and Aquatic Life Code, 515 ILCS 5/5-5 (2014), against Defendant.

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 (2016).

3. The Illinois Department of Natural Resources ("Illinois DNR") is an administrative agency of the State of Illinois, created by Section 1-5 of the Illinois Department of Natural Resources Act, 20 ILCS 801/1-5 (2014), and charged, *inter alia*, with the duty of conservation and restoration of aquatic life within Illinois pursuant to Section 1-150 of the Fish and Aquatic Life Code, 515 ILCS 5/1-150 (2014), and, pursuant to Section 5-5 of the Fish and Aquatic Life Code, 515 ILCS 5/5-5 (2014), the duty of enforcing the Fish and Aquatic Life Code.

4. The 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 (2016), and charged *inter alia*, with the duty of promulgating regulations under the Act, pursuant to Section 26 of the Act, 415 ILCS 5/26 (2016).

5. Defendant is and was, at all times relevant to the Complaint, an Illinois resident who owns and operates a cattle farm at 4560 E. 1850 North Road, Fithian, Vermilion County,

Illinois 61844 (the “Facility”). The Facility includes structures known as the “Old Barn” and the “New Barn,” as well as other structures and areas as further described in this Consent Order.

B. Allegations of Non-Compliance

1. Plaintiff contends that Defendant has violated the following provisions of the Act and Board Regulations:

- Count I: Water Pollution
415 ILCS 5/12(a) (2016)
- Count II: Water Pollution Hazard
415 ILCS 5/12(d) (2016)
- Count III: NPDES Permit Violations
415 ILCS 5/12(f) (2016)
35 Ill. Adm. Code 309.102(a)
- Count IV: Water Quality and Effluent Violations – Offensive Conditions
415 ILCS 5/12(a) (2016)
35 Ill. Adm. Code 302.203, 304.105, and 304.106
- Count V: Water Quality – Dissolved Oxygen
415 ILCS 5/12(a) (2016)
35 Ill. Adm. Code 304.105

2. Plaintiff contends that Defendant is liable for the reasonable value of fish and aquatic life destroyed, and for related investigation costs, as provided in the following Counts:

- Count VI: Death of Fish and Aquatic Life
415 ILCS 5/42(c) (2016)
515 ILCS 5/5-5 (2014)
- Count VII: Common Law Nuisance
- Count VIII: Common Law Negligence

C. Non-Admission of Violations or Liability

Defendant represents that he has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested

litigation. By entering into this Consent Order and complying with its terms, Defendant does not admit the allegations of the Complaint or the Amended Complaint filed in the action, and this Consent Order shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. On March 1, 2016, this Court entered its Interim Order. Section III of the Interim Order included certain affirmative actions required to be taken by Defendant.

2. To date, Defendant has performed the following compliance activities in order to resolve the violations cited in the Complaint and the Amended Complaint:

- a. Defendant has made modifications to the Slurrystore™ waste storage tank (“Tank”) and associated piping at the Facility so that the Tank only fills from the top;
- b. Defendant has maintained written precipitation records from the rain gauge located at the Facility;
- c. Defendant has measured and recorded, to the nearest inch, freeboard (remaining capacity) of the Tank on a monthly basis;
- d. Defendant has maintained records documenting the methods, locations, and volumes of application of livestock waste from the Facility;
- e. Defendant has submitted to Illinois EPA a written report with photographic records of (a) the livestock waste removal and remediation process undertaken in response to the release of livestock waste identified as IEMA Incident #H-2015-0996 (the “September 11 Discharge”); and (b) all modifications to the Facility between September 11, 2015 and the date of entry of this Order, which are associated with the handling of livestock

waste, leachate, and/or runoff, and which are corrective actions taken in response to the September 11 Discharge. The written report included a description of the quantity of livestock waste collected, the method and location of disposal of such livestock waste, and the modifications undertaken.

- f. Defendant has completed improvements for the capture and collection of livestock waste runoff from the vicinity of the Old Barn, including construction of concrete walls and drive-over curbs in multiple locations on the north, west, and south sides of the Old Barn, as well as installation of metal sheeting and earthen berms along the perimeter fence of the open concrete lot on the southern side of the Old Barn.
- g. Defendant has installed signage and other indicators on or near the five (5) valves located on the west side of the Tank, clearly identifying the open and closed position of each valve. Defendant closes and locks the valves located on the west side of the Tank at all times, except while associated waste pumping and transfer activities are actively occurring.
- h. Defendant has obtained Illinois Certified Livestock Manager status in accordance with Section 30 of the Illinois Livestock Management Facilities Act, 510 ILCS 77/30 (2014).
- i. Defendant has overseeded or reseeded as necessary, the 450-foot long grass waterway impacted by the September 11 Discharge. Defendant has maintained a temporary fence around the waterway in order to restrain any cattle from accessing the waterway until the overseeded and/or reseeded

grass was established, and has continued to maintain the waterway so as to maintain a thick vegetative cover along the impacted area.

- j. Defendant has modified the piping arrangement that extends from a leachate collection pit near the Commodity Storage Area to the Tank such that the pipe runs directly over the top of the Tank.
- k. Defendant has installed, placed into operation, and maintained in good operating condition both visible and audible high water alarms for the two (2) waste collection pits at the Old Barn and New Barn, and a visible high water alarm for the waste collection pit at the Commodity Storage Area. The visible high water alarm for the waste collection pit at the Commodity Storage Area utilizes a separate float from the float used for the pump at said waste collection pit.
- l. Defendant has submitted a Nutrient Management Plan for the Facility to the Illinois EPA.
- m. Defendant has placed walls on the north and east sides of the Commodity Storage Area to contain and divert runoff to the CSA collection pit. Defendant has removed existing beams prior to the installation of new walls, poured new concrete for wall foundation in order to obtain proper height to match existing concrete, and ensured wall and concrete seams are sealed so as to contain all silage leachate.

3. The Parties to this Consent Order acknowledge, stipulate, and agree that Defendant has heretofore complied with and performed the actions required of him pursuant to the Interim Order, except as otherwise agreed to by Plaintiff and Illinois EPA, and with the

further exception of certain continuing obligations and other incomplete items provided for in the Interim Order that will be addressed under the Future Compliance obligations set forth in paragraphs 2 through 6 of Section III.E of this Consent Order.

II. APPLICABILITY

This Consent Order shall apply to and be binding upon the Parties to the Consent Order. Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of his officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. This Consent Order may be used against Defendant 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 (2016).

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

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of Defendant to make the payments required in Sections III.A, III.B, and III.C, and to comply with the requirements of Section III.E of this Consent Order. In the event

that Defendant proposes to sell or transfer any real property or operations subject to this Consent Order prior to his compliance with the requirements of Section III.E.2 through III.E.6, Defendant shall notify Plaintiff thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. Defendant shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Defendant site access and all cooperation necessary for Defendant to perform to completion any remaining compliance obligation(s) required by this Consent Order. Defendant shall provide a copy of this Consent Order to any such successor in interest and Defendant shall continue to be bound by and remain liable for performance of all obligations under this Consent Order. Prior to the completion of the requirements of Section III.E.2 through III.E.6, Defendant and a proposed purchaser or operator of the facility may jointly request, and Plaintiff, in its discretion, may consider modification of this Consent Order to obligate the proposed purchaser or operator to carry out future requirements of this Consent Order in place of, or in addition to, the Defendant. This provision does not relieve Defendant from compliance with any otherwise applicable regulatory requirement regarding notice and transfer of applicable facility permits.

III. JUDGMENT ORDER

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulations and being advised in the premises, finds the following relief appropriate:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Civil Penalty

1. Defendant shall pay a civil penalty of Fifteen Thousand Dollars (\$15,000).

Payment shall be tendered at time of entry of the Consent Order.

2. The civil penalty payment shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund (“EPTF”). The case name and case number shall appear on the face of the certified check or money order.

3. 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

A copy of the certified check or money order and any transmittal letter shall be sent to:

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

B. Payment of Fish and Aquatic Life Restoration Costs

1. Defendant shall pay, as provided below, restoration costs in the amount of Eighty Two Thousand Five Hundred Fifteen Dollars (\$82,515) for the benefit and use of Illinois DNR. Illinois DNR shall use these funds, together with any interest and earnings thereon (if applicable), for the purchase of necessary materials and payment of labor costs to implement one or more restoration projects for the Stony Creek, the Salt Fork of the Vermilion River, and the Vermilion River (the “Stony Creek Restoration Project(s)”). Illinois DNR may use any remaining funds from Defendant’s payment for the following purposes:

- a. Contingency funding for the Stony Creek Restoration Project(s);
- b. Monitoring at Stony Creek, Salt Fork of the Vermilion River, and the Vermilion River;

c. Any other purpose authorized by Section 10 of the Natural Resources Restoration Trust Fund Act, 20 ILCS 882/10 (2014).

2. Except as provided below in paragraph 3 of this Section III.B, payment shall be made by submitting a certified check, money order, or corporate check made payable to the Clerk of the Vermilion County Circuit Court, for the use and benefit of Illinois DNR, pursuant to the instructions provided by the Clerk upon the Court's entry of an order directing the deposit of funds with the Clerk in accordance with Section 2-1011 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1011 (2014). Plaintiff shall be responsible for preparing and filing a motion with the Court requesting entry of the order as just described. The case name and number shall appear on the face of the check to the Clerk. A copy of the certified check or money order and any transmittal letter shall be sent to:

Brian Clappier
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

3. If the Court does not enter an order directing the deposit of funds with the Clerk within ninety (90) days after entry of this Consent Order, then Defendant shall immediately tender the payment required above under paragraph 1 of this Section III.B by certified check, money order, or corporate check payable to the Illinois DNR for deposit into the Natural Resources Restoration Trust Fund, to be used only for the purposes specified in paragraph 1 of this Section III.B. Payment pursuant to this paragraph shall be sent by first class mail and delivered to:

Illinois Department of Natural Resources
Office of Land Management

Attn: Contaminant Assessment Section
1 Natural Resources Way
Springfield, IL 62702

The case name and number shall appear on the face of the certified check or money order.

4. A copy of the check described above in paragraph 2 of this Section III.B, or, if applicable, the certified check or money order described above in paragraph 3 of this Section III.B, and any transmittal letter shall be sent to:

Brian Clappier, AAG
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

C. Stipulated Penalties, Interest and Default

1. If Defendant fails to complete any of the payments or future compliance activities and reporting requirements listed in, and by the date specified in, Sections III.A, III.B, and III.E of this Consent Order, Defendant shall provide notice to Plaintiff of each failure to comply with this Consent Order and Defendant shall pay stipulated penalties in the amount of \$100.00 per day until such time that compliance is achieved. Plaintiff may make a demand for stipulated penalties upon Defendant for his noncompliance with this Consent Order. However, failure by Plaintiff to make this demand shall not relieve Defendant of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date Defendant knows or should have known of his noncompliance with any provision of this Consent Order.

2. If Defendant fails to make any payment required by this Consent Order on or before the date upon which the payment is due, Defendant 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, Plaintiff shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

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

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

D. Stipulated Penalty and Interest Payment Procedures

All payments required by Section III.C that are related to the failure to pay civil penalties under Section III.A or to failure to fulfill any future compliance or reporting requirements under Section III.E of this Consent Order shall be made by certified check or money order payable to the Illinois EPA for deposit into the 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

All payments required by Section III.C that are related to the failure to pay fish and aquatic life restoration costs under Section III.B of this Consent Order shall be made by a certified check, money order, or corporate check payable to Illinois DNR. Payment pursuant to this paragraph shall be sent by first class mail and delivered to:

Illinois Department of Natural Resources
Office of Land Management
Attn: Contaminant Assessment Section
1 Natural Resources Way
Springfield, IL 62702

The case name and case number shall appear on the face of the certified check, money order or corporate check. A copy of the certified check, money order or corporate check, and any transmittal letter shall be sent to:

Brian Clappier
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62704

E. Future Compliance

1. From and after the date of entry hereof, this Consent Order shall supersede the Interim Order in all respects. The Interim Order is hereby terminated, and Defendant shall address the outstanding items from the Interim Order pursuant to and in accordance with paragraphs 2 through 6 of this Section III.E of this Consent Order.

2. Defendant has installed a weather station at the Facility and shall utilize the weather station at the Facility for precipitation records, which such records may be collected and maintained in the form and format as provided for with the weather station. Defendant shall keep all such precipitation records on file at the Facility and shall make such records available to Illinois EPA upon request.

3. Defendant has modified the piping arrangement that connects the New Barn Pit and CSA leachate collection pit to the Tank from the current "Y" configuration to an "H" configuration, increasing Defendant's control over the flow direction and reducing the incidence of unintended backflow to the pits. Defendant shall not connect multiple waste stream pipes in

the future without (1) preparing a written operations protocol for all associated pumps and valves, and (2) training all of Defendant's employees in the use of such operations protocol. Defendant shall keep all such written operations protocols on file at the Facility, together with training records for Defendant's employees, and shall make such protocols and training records available to Illinois EPA upon request.

4. On August 22, 2017, Defendant submitted a valve operations protocol ("Protocol"), including a schematic diagram ("Diagram") for the Tank and associated pipes and valves, attached hereto as Exhibit A. Defendant shall operate the valves and the Tank in compliance with the Protocol, and shall train all personnel who may operate the relevant valves at the Facility of the Protocol.

5. Prior to completion of the anticipated maintenance work on the Tank, but in any event no later than November 30, 2017, Defendant shall fill the bottom drain in the Tank with concrete, so as to completely and thoroughly plug said bottom drain. Defendant shall notify the Illinois EPA of the planned plugging work at least seven (7) days prior to the plugging work being done. Defendant shall take photos of the work to fill the bottom drain in the Tank with concrete, submit such photos to Illinois EPA within three (3) business days after the work is completed, and await Illinois EPA approval of the bottom drain plug prior to recommencing use of the Tank for manure storage. Illinois EPA shall be deemed to approve the aforementioned work unless Illinois EPA objects within four (4) business days of receipt of said photos. This work shall be accomplished with the oversight of a Licensed Professional Engineer.

6. With the exception of the requirement of Paragraph 5 of this section, above, Defendant shall submit any reports, plans, or other submittals to the Illinois EPA for the Illinois EPA's review and approval, which approval shall not be unreasonably denied or withheld. If

Illinois EPA disapproves of any report, plan or other submittal by Defendant pursuant to this Order, then Defendant shall, within thirty (30) days after receiving written notice of such disapproval, submit a revised document that corrects all deficiencies identified by Illinois in its disapproval letter.

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

8. Defendant shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint and the Amended Complaint.

F. *Force Majeure*

1. *Force majeure* is an event arising solely beyond the control of Defendant, which prevents the timely performance of any of the requirements of this Consent Order despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant use "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* event and best efforts to address the effects of any such event both as it is occurring and after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. For purposes of this Consent Order, *force majeure* shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of Defendant. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse Defendant for a failure to comply with such a requirement.

2. When a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, Defendant shall orally notify the

Bureau of Water at Illinois EPA's Peoria Regional Office at (309) 671-3022 within forty-eight (48) hours of the occurrence. Written notice shall be given to the representatives of Plaintiff listed in Section III.G, below, as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence. Written notice shall include an explanation and description of reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, a schedule for implementation of any measures to be taken to prevent or mitigate the delay or effect of the delay, and Defendant's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim. This section shall be of no effect as to the particular event involved if Defendant fails to comply with these notice requirements.

3. Within ten (10) calendar days of receipt of any written *force majeure* notice, Plaintiff shall respond in writing regarding Defendant's claim of a delay or impediment to performance. If Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Defendant and that Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Order. Defendant shall not be liable for stipulated penalties for the period of any such stipulated extension.

4. If Plaintiff does not accept Defendant's claim of a *force majeure* event, Defendant must file a petition with the Court within twenty (20) calendar days of receipt of Plaintiff's determination in order to contest the imposition of stipulated penalties. Plaintiff shall have twenty (20) calendar days to file its response to said petition. The burden of proof of establishing

that a *force majeure* event prevented the timely performance shall be upon Defendant. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of Defendant and that Defendant could not have prevented the delay by the exercise of due diligence, Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

G. Dispute Resolution

1. Except as provided herein, the Parties to the Consent Order may seek to informally resolve disputes arising under this Consent Order, including but not limited to the Illinois EPA's decision regarding appropriate or necessary response activity, approval or denial of any report, plan or remediation objective, or the Plaintiff's rejection of a request for modification or termination of the Consent Order. The Plaintiff reserves the right to seek enforcement by the Court where the Defendant has failed to satisfy any compliance deadline within this Consent Order. The following are also not subject to the dispute resolution procedures provided by this section: a claim of force majeure, a failure to make any required payment and any circumstances posing a substantial danger to the environment or to the public health or welfare of persons.

2. The dispute resolution procedure must be invoked by a party through a written notice describing the nature of the dispute and the party's position with regard to such dispute. The other party shall acknowledge receipt of the notice and schedule a meeting to discuss the dispute informally not later than fourteen (14) calendar days from the receipt of such notice. These informal negotiations shall be concluded within thirty (30) calendar days from the date of the first meeting between the parties, unless the parties agree, in writing, to shorten or extend this

period. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein, and stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution. As part of the resolution of any dispute, the Parties to the Consent Order, by agreement or by order of this Court, may extend or modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

3. In the event that the parties are unable to reach agreement during the informal negotiation period, the Plaintiff shall provide the Defendant with a written summary of its position regarding the dispute. The position advanced by the Plaintiff shall be considered binding unless, within twenty (20) calendar days of the Defendant's receipt of the written summary of the Plaintiff's position, the Defendant files a petition with this Court seeking judicial resolution of the dispute. The Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument responsive to the petition within twenty (20) calendar days of service of Defendant's petition. The administrative record of the dispute shall include the written notice of the dispute, any responsive submittals, the Plaintiff's written summary of its position, the Defendant's petition before the Court and the Plaintiff's response to the petition. The Plaintiff's position shall be affirmed unless, based upon the administrative record, it is against the manifest weight of the evidence.

H. Notice and Submittals

Except for payments, the submittal of any notice, reports or other documents required under this Consent Order, shall be delivered to the following designated representatives:

As to Plaintiff

Brian Clappier
Assistant Attorneys General

Illinois Attorney General's Office, Environmental Bureau
500 South Second Street
Springfield, Illinois 62704
bclappier@atg.state.il.us
ebs@atg.state.il.us

Christine Zeivel
Assistant Counsel, Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Christine.Zeivel@Illinois.gov

Todd Bennett
Illinois Environmental Protection Agency
Peoria Regional Office
412 SW Washington Street, Suite D
Peoria, IL 61602
Todd.Bennett@Illinois.gov

Renee Snow
Office of Legal Counsel
Illinois Department of Natural Resources
1 Natural Resources Way
Springfield, IL 62702
Renee.Snow@Illinois.gov

As to Defendant

Gabriel Shepherd
4560 E. 1850 North
Fithian, IL 61844

Donald Q. Manning
McGreevy Williams, P.C.
6735 Vistagreen Way
Rockford, IL 61107
dqm@mjwpc.com

Mike Raub
Heyl Royster Voelkert & Allen
102 East Main Street, Suite 300
Urbana, IL 61801
MRaub@heyloyster.com

I. Release from Liability

In consideration of Defendant's payment of a \$15,000 civil penalty, his payment of \$82,515 in restoration costs, his commitment to cease and desist as contained in Section III.E.8 above, and his completion of all activities required hereunder and in the Interim Order, Plaintiff releases, waives and discharges Defendant, his agents, heirs, and assigns from any further liability or penalties for the violations of the Act, and Board Regulations, as well as liabilities under the Fish and Aquatic Life Code and common law that were the subject matter of the Complaint and Amended Complaint herein. The release set forth above does not extend to any facts and circumstances other than those alleged in Plaintiff's Complaint filed on December 3, 2015, and/or in the Amended Complaint filed on June 24, 2016. Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against Defendant, his agents, heirs, and assigns with respect to all other matters, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations;
- c. liability for natural resources damage other than that arising out of the violations and/or statutory or common law causes of action alleged in Plaintiff's Amended Complaint filed on June 24, 2016; and
- d. Defendant's failure to satisfy the requirements of this Consent Order; provided that, upon payment in full of \$82,515 in restoration costs, Defendant, his agents, heirs, and assigns shall have no further liability to Plaintiff for property damage to fish and aquatic life associated with the violations and statutory and common law claims alleged in the Complaint and the Amended Complaint.

Nothing in this Consent Order 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, other than Defendant.

J. Termination

1. Defendant may request that this Consent Order terminate no sooner than twelve (12) months after Defendant has completed all actions required of Defendant in the Consent Order, provided that Defendant has been in continuous compliance with the terms of the Consent Order for the twelve (12) months preceding the request. Any such request must be made by notice to Plaintiff and include a statement that Defendant has completed all actions required by this Consent Order and has been in continuous compliance with the terms of the Consent Order for the twelve (12) months preceding the request and the following certification by Defendant:

I certify under penalty of law that this statement was prepared under my direction or supervision, and that the information submitted in or accompanying this statement of final compliance is to the best of my knowledge true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and or imprisonment for knowing violations.

2. Plaintiff shall notify Defendant of its decision on the request within forty-five (45) calendar days of Plaintiff's receipt of the request. If Plaintiff agrees to terminate this Consent Order, Plaintiff and Defendant shall jointly file a notice with the Court that the Consent Order is terminated. If Plaintiff does not agree to terminate this Consent Order, Plaintiff shall provide Defendant written notification stating the reasons why this Consent Order should not be terminated. The Consent Order shall remain in effect pending resolution of any dispute by the parties or the Court concerning whether Defendant has completed its obligations under this Consent Order and is in compliance with the terms of the Consent Order. The provisions of

Sections III.E.8 and III.I shall survive and shall not be subject to and are not affected by the termination of any other provision of this Consent Order.

K. Execution and Entry of Consent Order

This Order shall become effective only when executed by all Parties to the Consent Order and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and legally bind them to it.

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WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR PLAINTIFF:

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

ALEC MESSINA, Director
Illinois Environmental Protection Agency

BY: Andrew Armstrong
ANDREW ARMSTRONG, Chief
Environmental Bureau, Springfield

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: 12/14/2017

DATE: _____

ILLINOIS DEPARTMENT OF NATURAL
RESOURCES

FOR DEFENDANT:

WAYNE ROSENTHAL, Director
Illinois Department of Natural Resources

GABRIEL SHEPHERD

BY: _____
ERIC LOHRENZ
General Counsel

BY: _____

DATE: _____

DATE: _____

ENTERED:

JUDGE

DATE: _____

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR PLAINTIFF:

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: _____
ANDREW ARMSTRONG, Chief
Environmental Bureau, Springfield

DATE: _____

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

ALEC MESSINA, Director
Illinois Environmental Protection Agency

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 12/15/17

ILLINOIS DEPARTMENT OF NATURAL
RESOURCES

WAYNE ROSENTHAL, Director
Illinois Department of Natural Resources

BY: _____
ERIC LOHRENZ
General Counsel

DATE: _____

FOR DEFENDANT:

GABRIEL SHEPHERD

BY: _____

DATE: _____

ENTERED:

JUDGE

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ALEC MESSINA, Director
Illinois Environmental Protection Agency

BY: _____
ANDREW ARMSTRONG, Chief
Environmental Bureau, Springfield

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

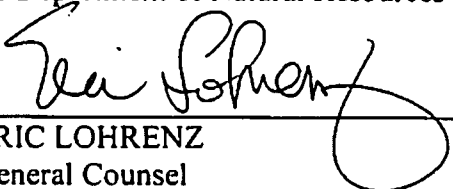
DATE: _____

ILLINOIS DEPARTMENT OF NATURAL
RESOURCES

FOR DEFENDANT:

WAYNE ROSENTHAL, Director
Illinois Department of Natural Resources

GABRIEL SHEPHERD

BY: 
ERIC LOHRENZ
General Counsel

BY: _____

DATE: Dec. 7, 2017

DATE: _____

ENTERED:

JUDGE

DATE: _____

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AGREED:

FOR PLAINTIFF:

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

ALEC MESSINA, Director
Illinois Environmental Protection Agency

BY: _____
ANDREW ARMSTRONG, Chief
Environmental Bureau, Springfield

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

ILLINOIS DEPARTMENT OF NATURAL
RESOURCES

FOR DEFENDANT:

WAYNE ROSENTHAL, Director
Illinois Department of Natural Resources

GABRIEL SHEPHERD

BY: Gabriel Shepherd

BY: _____
ERIC LOHRENZ
General Counsel

DATE: 11/29/17

DATE: _____

ENTERED:

Clara C. Hill
JUDGE

DATE: 12/29/2017

Value operating procedure

Value 1 is located at the base of the slurry store.

Value 2 is located at ground level at the top of the reception pit on the west end.

Value 3 is located on the west end of the pit underground with a T handle to open and close.

Value 4 is a hydraulic value located on the manure pump in the pit.

Operating procedure for daily operation:

Value 1 will be closed.

Value 2 will be closed.

Value 3 will be closed.

Value 4 will be closed.

Operating procedure if pumping from cattle barn reception pit only:

Value 1 will remain closed.

Value 2 will be open.

Value 3 will be closed.

Value 4 will be open.

Operating procedure if utilizing liquid from commodity storage pit for agitation:

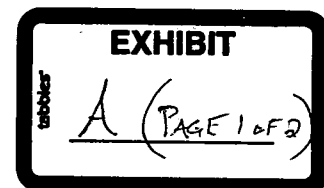
Value 1 will be open.

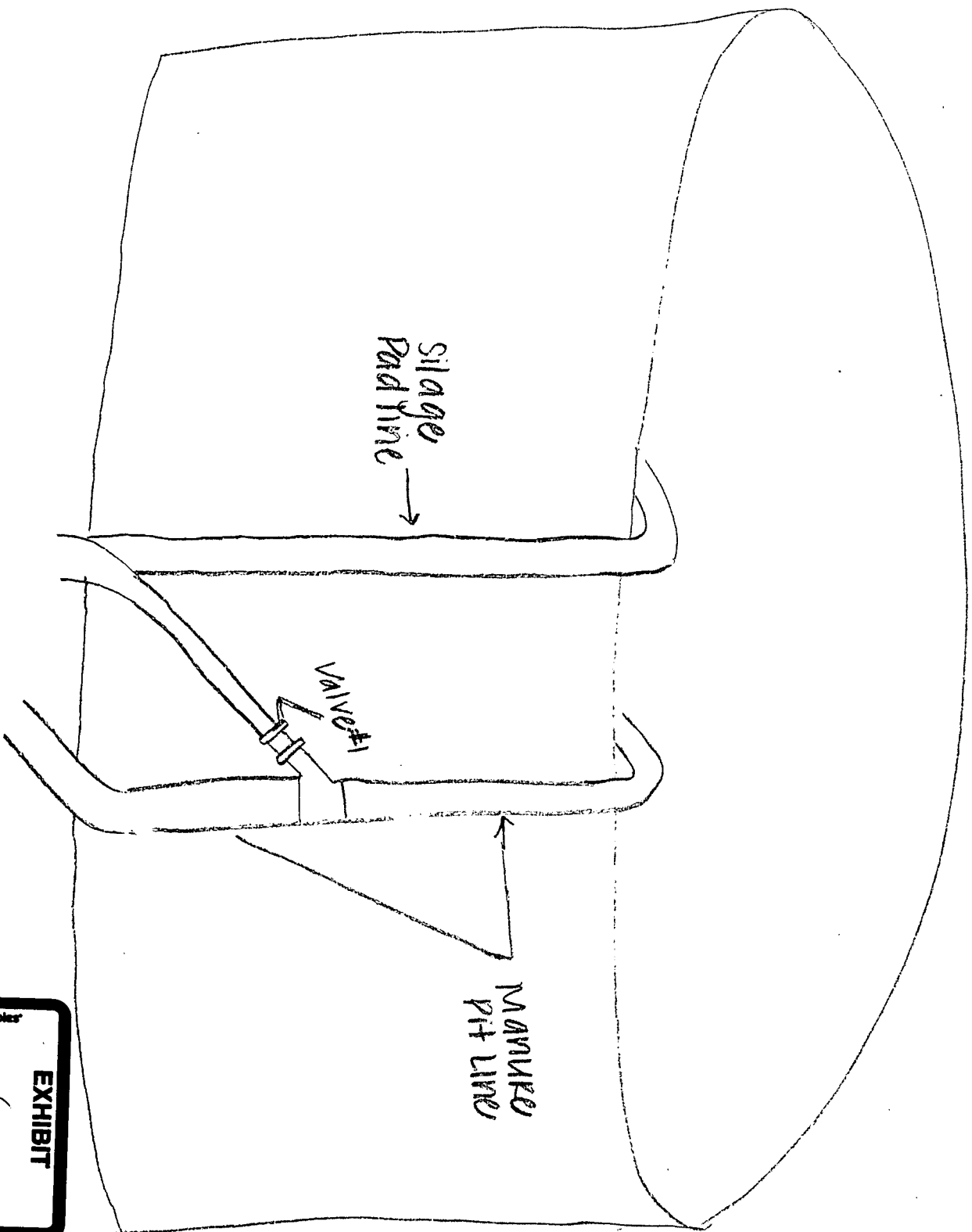
Value 2 will be closed.

Value 3 will be open.

Value 4 will be closed.

Gabe fully understands, acknowledges and takes responsibility for the potential error and risks involved with the configuration. The operation of the piping will be in compliance with the protocols set forth above. All personnel who may or will operate the valves will be trained in the protocol.





tabbler
EXHIBIT
A (Page 2 of 2)