

COPY

**IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT
JO DAVIESS COUNTY, ILLINOIS
CHANCERY DIVISION**

FILED

OCT 09 2019

CLERK OF THE CIRCUIT COURT OF
THE FIFTEENTH JUDICIAL CIRCUIT
JO DAVIESS COUNTY ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
ex rel. KWAME RAOUL, Attorney)
General of the State of Illinois,)

Plaintiff,)

v.)

No. 2018 CH 20

BORSDORF FARMS, LLC.,)
an Illinois corporation, and WILLIAM)
BORSDORF, an individual,)

Defendants.)

CONSENT ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, the ILLINOIS DEPARTMENT OF NATURAL RESOURCES ("Illinois DNR"), and Defendants, BORSDORF FARMS, LLC., and WILLIAM BORSDORF, (collectively "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 of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court's entry of the Consent Order and issuance of any injunctive relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2018), and the Fish and Aquatic Life Code ("Fish Code"), 515 ILCS 5/5-5 (2018), alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to this Consent Order that it be a final judgment on the merits of this matter.

A. Parties

1. On July 30, 2018, a Complaint was filed on behalf of the People of the

State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of the Illinois DNR, against the Defendants.

2. The 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 (2016), and charged, inter alia, with the duty of enforcing the Fish Code, 515 ILCS 5/5-5 (2016).

3. At all times relevant to this Complaint, Defendant, BORSDORF FARMS, LLC., was and is an Illinois Limited Liability Company ("BORSDORF FARMS"). BORSDORF FARMS was and is managed by WILLIAM BORSDORF, an individual, and a Defendant. BORSDORF FARMS is located at 327 Route 78, Stockton, Jo Daviess County, Illinois 61085. ("Facility").

B. Allegations of Non-Compliance

Plaintiff contends that the Defendants have violated the following provisions of the Act, Fish Code and Wildlife Code:

- Count I: Water Pollution: Section 12(a) of the Act, 415 ILCS 5/12(a) (2016)
- Count II: Water Pollution Hazard: Section 12(d) of the Act, 415 ILCS 5/12(d) (2016)
- Count III: Restoration of Aquatic Life and Response Costs: Section 12(a) and 42(c) of the Act, 415 ILCS 5/12(a) and 42(c) (2016) and Section 1-150 of the Fish Code, 515 ILCS 5/1-150 (2016)

C. Non-Admission of Violations

The Defendants represent that they have 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, the Defendants do

not affirmatively admit the allegations of violations within the Complaint and referenced above, and this Consent Order shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. In September of 2016, Defendants constructed a temporary dam in the drainage way south of the facility, and additional measures were taken to reduce the likelihood of a future discharge.
2. Between September 13 and November 1, 2016, silage leachate/runoff that collected along the south side of the facility was cleaned and the collected liquids were pumped into the adjacent waste storage facility.
3. The Nutrient Management Plan ("NMP") was updated to include _____ ("BMP") procedures to reduce the chance of future discharges.
4. The following maintenance and changes to the silage/feed storage pad has been made:
 - a. In September of 2016, feed stock was removed from the drainage channel along the south side of the pad to allow leachate and runoff to flow to the existing waste storage facility.
 - b. In September of 2016, Defendants constructed a temporary dam along the west side of the feed pad to contain runoff.
 - c. By May of 2017, Defendants installed a new drive over the concrete curb along the west side of the feed pad.
5. Defendant completed its review and evaluation of the waste handling and storage system by March 2017.
6. The NMP was updated to reflect current animal numbers.

II. APPLICABILITY

This Consent Order shall apply to and be binding upon the Parties to the Consent Order.

III. JUDGMENT ORDER

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Stipulated Penalties, Interest and Default

1. If the Defendants fail to complete any activity or fail to comply with any response or reporting requirement by the date specified in this Consent Order, the Defendants shall provide notice to the Plaintiff of each failure to comply with this Consent Order and shall pay stipulated penalties in the amount of \$50.00 per day per violation for up to the first fifteen (15) days of violation, \$100.00 per day per violation for the next fifteen (15) days of violation and \$200.00 per day per violation thereafter until such time that compliance is achieved. The Plaintiff may make a demand for stipulated penalties upon the Defendants for its noncompliance with this Consent Order. However, failure by the Plaintiff to make this demand shall not relieve the Defendants of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Defendants know or should have known of its noncompliance with any provision of this Consent Order.

2. If the Defendants fail to make any payment required by this Consent Order on or before the date upon which the payment is due, the Defendants 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 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 the Defendants 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 the 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.

B. Stipulated Penalty and Interest Payment Procedures

1. Any payments required by Section III.A of this Consent Order shall be made by certified check or money order payable to the "Natural Resources Restoration Trust Fund".

Payments shall be sent by first class mail and delivered to:

Illinois Department of Natural Resources
Office of Legal Counsel
One Natural Resources Way
Springfield, IL 62701-1271
ATTN: R. Snow, General Counsel

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

Ellen F. O'Laughlin
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

C. Future Compliance

1. For four years from the date of entry of this Consent Order, Defendants shall conduct inspections during the annual filling of the silage storage structure ("Silo"), and for two weeks following completion of filling the Silo, as follows:

a. Defendants shall conduct visual inspection of the entire perimeter of the silage storage structure to ensure silage leachate drains to the manure storage lagoon.

- b. The visual inspection shall be conducted a minimum of once daily, during the process of filling the Silo, and once a week for two weeks following completion of filling the Silo. The purpose of each inspection is to confirm that the drainage channel from the Silo to the manure storage lagoon is clear and free of any obstruction.
- c. Defendants shall include photographic verification of the southern portion of the Silo during each inspection.
- d. Defendants shall record each inspection on the form, attached hereto as Exhibit A3.
- e. By November 1 of each year, Defendants shall electronically submit completed forms annually to the representatives designated in Section III.H of this Consent Order.

2. If farming is no longer conducted at the Facility, Defendants shall notify the Plaintiff's representatives listed in Section III.H of this Consent Order, and its obligation under this Consent Order to conduct inspections during the annual filling of the Silo shall cease.

3. Defendants have diverted and shall continue to divert all clean surface water away from the livestock waste collection system.

4. The Illinois DNR, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon the Defendants' Facility which is the subject of this Consent Order, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. All inspections must be preceded by at least 48 hours prior notice to the Defendants. All persons intending to be present to inspect must acknowledge and comply with all biosecurity measures then applicable at the Facility. In conducting such inspections, the Illinois DNR, its employees and representatives, and the Attorney General, his employees and representatives, may take photographs, samples, and collect information, as they reasonably deem necessary.

5. This Consent Order in no way affects the responsibilities of the Defendants to

comply with any other federal, state or local laws or regulations, including but not limited to the Act, and Fish Code.

6. The Defendants shall cease and desist from future violations of the Act and Fish Code that were the subject matter of the Complaint.

D. Conservation Project

1. In order to promote the goals of the Act and Fish Code to restore, protect and enhance the quality of the environment, the Defendants shall perform a conservation project which is set forth in Attachment A hereto. The settlement value of the conservation project is twenty thousand dollars (\$20,000.00) and will offset the restoration of aquatic life and response costs sought by the Plaintiff in this matter.

2. Defendants shall implement the conservation project for four years following the entry of this Consent Order. By December 1 of each year, Defendants shall electronically submit an annual report which includes all information set forth in Attachment A, to the contact persons identified in Section III.H of this Consent Order for review and confirmation that the conservation project was performed pursuant to this Order. The annual report shall also include the following certification by the Defendants:

I certify under penalty of law that this document was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted based on my inquiry of those persons directly responsible for gathering the information, and that the information submitted in or accompanying this notification 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.

In the event that the conservation project cannot be completed, the Defendants shall pay the settlement value of the conservation project (\$20,000.00) or the number of years of the

conservation project remaining uncompleted multiplied by \$5,000.00, whichever is less to the Illinois DNR pursuant to the procedures of Section III.B no later than the date by which the conservation project should have been completed.

3. By signature on this Consent Order, the Defendants certify that, as of the date of entry of this Order, it is not required to perform or develop the foregoing conservation project by any federal, state or local law or regulation, nor is it required to perform or develop the conservation project by agreement or injunctive relief in any other case. The Defendants further certify that they have not received, and are not presently negotiating to receive credit for, the conservation project in any other enforcement action.

Any public statement, oral or written, in print, film or other media, made by the Defendants making reference to any conservation project shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the Illinois Attorney General and the Illinois Department of Natural Resources for alleged violations of the Illinois Environmental Protection Act and for the restoration of aquatic life response costs.”

E. *Force Majeure*

1. *Force majeure* is an event arising solely beyond the control of the Defendants, which prevents the timely performance of any of the requirements of this Consent Order and shall include, but is not limited to, events such as floods, fires, tornadoes, wet ground preventing reasonable access, other natural disasters, and labor disputes beyond the reasonable control of the Defendants. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse the Defendants 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, the Defendants shall orally notify Beth Whetsell, 217-557-7816 within seven days of the occurrence. Written notice shall be given to the Plaintiff's representatives as listed in Section III.H of this Consent Order as soon as practicable, but no later than thirty (30) calendar days after the claimed occurrence. This section shall be of no effect as to the particular event involved if the Defendants fail to comply with these notice requirements.

3. Within ten (10) calendar days of receipt of any written *force majeure* notice, the Plaintiff shall respond in writing regarding the Defendants' claim of a delay or impediment to performance. If the Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendants and that the Defendants 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. The Defendants shall not be liable for stipulated penalties for the period of any such stipulated extension.

4. If the Plaintiff does not accept the Defendants' claim of a *force majeure* event, the Defendants must file a petition with the Court within twenty (20) calendar days of receipt of the Plaintiff's determination in order to contest the imposition of stipulated penalties. The 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 the Defendants. If this Court determines that the delay or impediment to performance has been or

will be caused by circumstances solely beyond the control of the Defendants and that the Defendants could not have prevented the delay by the exercise of due diligence, the Defendants 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.

F. Enforcement and Modification of Consent Order

1. This Consent Order is a binding and enforceable order of this Court. This Court shall retain jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. The Defendants agree that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waive any requirement of service of process.

2. The Parties to the Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of this Court. A request for any modification shall be made in writing and submitted to the representatives designated in Section III.H of this Consent Order. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party, for filing and incorporation by reference into this Consent Order.

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 IDNR'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 Defendants have 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 Defendants 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 Defendants' receipt of the written summary of the Plaintiff's position, the Defendants file 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 Defendants' 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 the Plaintiff

Ellen F. O'Laughlin
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
Eolaughlin@atg.state.il.us

Renee Snow
General Counsel
Illinois Department of Natural Resources
Region II Offices
One Natural Resources Way
Springfield, Illinois 62702-1271
Renee.Snow@illinois.gov

Beth Whetsell
Office of Resources Conservation
Illinois Department of Natural Resources
One Natural Resources Way

Springfield, Illinois 62702-1271
Beth.Whetsell@illinois.gov

As to the Defendants

Attorney Donald L. Shriver
Shriver, O'Neill & Thompson
515 N. Court St.
Rockford, IL 61103
dlshriver@sotlaw.net

Borsdorf Farm LLC
11752 U.S. 20 E.
Stockton, IL 61085
Borsdorf@frontier.com

I. Release from Liability

In consideration of the Defendants' commitment to cease and desist as contained in Section III.C.5 above, its completion of the Conservation Project as contained in Section III.D above and its and completion of all activities required hereunder, the Plaintiff releases, waives and discharges the Defendants from any further liability or penalties for the violations of the Act and Fish Code 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 Plaintiff's Complaint filed on July 30, 2018. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against the Defendants with respect to all other matters, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations; and
- c. the Defendants' failure to satisfy the requirements of this Consent Order.

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 the Defendants.

J. 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 to legally bind them to it.

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:

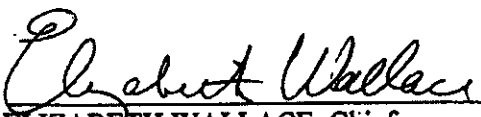
FOR THE PLAINTIFF:

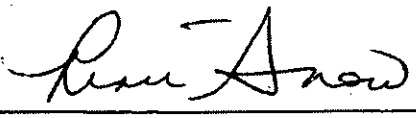
PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

ILLINOIS DEPARTMENT OF NATURAL
RESOURCES

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

COLLEEN CALLAHAN, Director
Illinois Department of Natural Resources

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
RENEE SNOW, General Counsel

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DATE: 10/9/19

DATE: 10/4/2019

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FOR THE DEFENDANT:

BORSDORF FARMS ~~S~~ LLC

BY: M.A. Borsdorf

Its: Manager

DATE: SEPT 13, 2019

COPY

FOR THE DEFENDANT:

WILLIAM BORSDORF

BY: W.A. Borsdorf

DATE: SEPT 13, 2019

ENTERED: '

Will. A. Kelly
JUDGE

DATE: 10-9-19

Number of Dairy Farms, in Certain Counties, Complementary Program per Contract Order No. _____

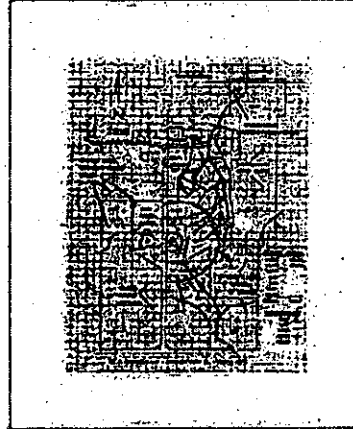
planting schedule for fields 1513-1533

Map of all fields subject to complementary program attached. Check field # indicates spring termination of previous crop on 3/15 for 2019. Map should be able to show previously submitted 2019 maps based on map of 2019 planting schedule submitted 7/29/2018, plus corrected to representative cover 7/24/2019 11:20 AM.

| Field # | Area | Year | Spring termination? | plant planned? | supplemental applied (quantity) | all other crop approved? |
|---------|-------|------|---------------------|----------------|---------------------------------|--------------------------|
| 5 | 16.88 | 2019 | NA | prevent plant | | yes |
| | | 2020 | | | | |
| | | 2021 | | | | |
| | | 2022 | | | | |
| 3 | 45.38 | 2019 | NA | 20' stage | | yes |
| | | 2020 | | | | |
| | | 2021 | | | | |
| | | 2022 | | | | |
| 4 | 5.00 | 2019 | NA | | | |
| | | 2020 | | | | |
| | | 2021 | | | | |
| | | 2022 | | | | |
| 5 | 54.33 | 2019 | NA | 20' stage | | yes |
| | | 2020 | | | | |
| | | 2021 | | | | |
| | | 2022 | | | | |
| 6 | 41.45 | 2019 | NA | 20' stage | | yes |
| | | 2020 | | | | |
| | | 2021 | | | | |
| | | 2022 | | | | |
| 7 | 6.75 | 2019 | NA | prevent plant | | yes |
| | | 2020 | | | | |
| | | 2021 | | | | |
| | | 2022 | | | | |
| 8 | 95.77 | 2019 | NA | corn/grain | | no |
| | | 2020 | | | | |
| | | 2021 | | | | |
| | | 2022 | | | | |
| 10 | 17.48 | 2019 | NA | corn/grain | | no |
| | | 2020 | | | | |
| | | 2021 | | | | |
| | | 2022 | | | | |
| 11 | 24.87 | 2019 | NA | prevent plant | | yes |
| | | 2020 | | | | |
| | | 2021 | | | | |
| | | 2022 | | | | |
| 16 | 6.85 | 2019 | NA | 20' stage | | yes |
| | | 2020 | | | | |
| | | 2021 | | | | |
| | | 2022 | | | | |
| 17 | 24.89 | 2019 | NA | 20' stage | | yes |
| | | 2020 | | | | |
| | | 2021 | | | | |
| | | 2022 | | | | |
| 18 | 57.76 | 2019 | NA | 20' stage | | yes |
| | | 2020 | | | | |
| | | 2021 | | | | |
| | | 2022 | | | | |

3473 immediately adjacent to the bounded territory

247.55 other



sheet 11 148.65

is photo immediately prior to termination attached

is projection subject to change based on weather, markets, government programs, politics and other unforeseen factors/circumstances; BMR recognizes that "prevent plant" is not a planned action; however, given the previous statements, such circumstances is worth noting.

1: There is no supplemental fertilizer applied to cover crops however, on occasion manure may be applied before seeding of cover crops. Also, there is no nitrogen, phosphorus, and potassium applied for bare crop land. For row crops (both for silage and grain), no supplemental phosphorus and potassium are expected to be applied. Nitrogen might be applied in various amounts on various dates depending on many conditions, including the crop use the transition preceding year, the amount of manure applied, and weather conditions. Samples are tested to determine what nitrogen application is recommended for the same crop that year. Because nitrogen is very expensive, every effort is made to not apply more than is reasonably needed. Therefore, if any nitrogen is applied or, even by any outside source, phosphorus or potassium, amounts will be included with the certification map submission. The nitrogen application amounts will be general approximations and cannot be determined to exact amounts for each acre.

Borsdorf Dairy Farm, Jo Daviess County. Compensatory Project per Consent Order No. _____

Cover Crop record

Include photos of each field subject to cover crop planting per year. Photo should capture condition of sprouted cover crop.

Include a map of all fields subject to cover crop planting per year. Maps should be similar to those previously submitted.

| Year | Field | Species (include KRI if applicable) | Seeding rate (lb/acre) | Seeding date(s) | Method of seeding DJI (D) Planter (P) Other (A) | Manure application date | Confirmation of completion (planner) (S) Date |
|------|-------|---|------------------------------|--------------------|---|-------------------------------|--|
| 2019 | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| 2020 | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| 2021 | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| 2022 | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

Planner (print name and signature): _____

Attachment A: Cover Crop Conservation Project

In order to restore, protect and enhance the quality of the environment, Borsdorf Farm LLC and William Borsdorf (Defendants), shall perform a conservation project as set forth below. The settlement value of the conservation project is twenty thousand dollars (\$20,000.00) and will offset the restoration of aquatic life and response costs sought by the State of Illinois in 2018 CH 20 (Jo Daviess County).

Starting in Fall 2019, and for four years thereafter, the Defendants will plant a cover crop on fields previously planted with soybeans and corn/silage, covering approximately 180-200 acres per year. Beginning in the Fall of 2019 and ending in the Fall of 2022, cover cropping is no longer a voluntary practice, but a commitment to plant and maintain 180-200 acres of cover crops per year to off-set environmental losses related to the alleged release of pollutants into the Yellow Creek stream system. The purpose of this project is to improve water quality of the Yellow Creek stream system by filtering farm and field runoff to the stream for an extended period of time. As stated by the Natural Resource Conservation Service (NRCS) on 12/19/2018 to the Defendants, "All cover crop strategies require research and consideration into cost, timing and labor. We or your agronomist can assist you with this and you may also consult the Midwest Cover Crops Council website at <http://mccc.msu.edu>." The Illinois Department of Natural Resources (IDNR) supports such collaboration to develop a Borsdorf Farm-specific cover crop planting plan as long as collaboration is consistent with Section III. D. 3.

The Defendants shall electronically submit the following to the Plaintiff contact persons identified in Section III.H of the Consent Order:

- Within ten (10) days of each annual Farm Service Agency (FSA) certification reporting period for crop seasons 2020, 2021 and 2022, the Defendants shall provide a proposed crop planting schedule. A planting schedule table is included in Attachment A.1, and the Defendants may use this planting schedule table as a template or a guide. At a minimum, the Defendants shall submit a copy of an FSA certification map that readily identifies subject fields and all proposed cropping activities with any applicable supplemental nutrient application information. The map shall readily identify fields subject to Spring termination of cover crops. Photos capturing field conditions immediately prior to termination shall also be provided at this time. Fields proposed for Fall cover crop planting should be labeled/highlighted in some way. Within fifteen (15) days of the entry of the Consent Order, the Defendants shall provide an FSA certification map for crop season 2019 that readily identifies subject fields and proposed cropping activities with any applicable supplemental nutrient/fertilizer application information. Fields proposed for fall cover crop planting should be labeled/highlighted in some way. If the Defendants adjust the planting schedule, changes will be reported with other submittals on December 1.
- By December 1 of each year of the conservation project, (2019 to 2022), the Defendants shall provide an annual report that includes the cover crop activity record for that particular year and a summary of all expenditures for the cover crop applications. If the expenditures are not available by December 1, a summary will be provided within 10 days of the

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Defendants' receipt of the information. If the Defendants are consulting with NRCS, then they shall submit the NRCS Illinois Conservation Practice Job Sheet 340 as the cover crop activity record portion of the annual report along with an FSA certification map that readily identifies fields subject to cover cropping activities and photos showing the sprouted cover crop of each field. If the Defendants are not consulting with NRCS, then they shall submit a cover crop record sheet, as set forth in Attachment A.2 hereto, along with an FSA certification map that readily identifies fields subject to cover cropping activities and photos showing the sprouted cover crop of each field.

Borsdorf Dairy Farm, Jo Daviess County. Compensatory Project per Consent Order No. _____

Cover Crop record

Include photos of each field subject to cover crop planting per year. Photo should capture condition of sprouted cover crop.

Include a map of all fields subject to cover crop planting per year. Maps should be similar to those previously submitted.

| Year | Field | Species: • cereal rye (CR) • other (identify) | Seeding rate (lb/acre) | Seeding date(s) | Method of seeding: • Drill (D) • Broadcast (B) • Aerial (A) | Manure application date | Confirmation Of completion (planner initials) |
|------|-------|---|---------------------------|-----------------|--|-------------------------|---|
| 2019 | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| 2020 | | | | | | | |
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Planner (print name and signature): _____

Attachment A: Cover Crop Conservation Project

In order to restore, protect and enhance the quality of the environment, Borsdorf Farm LLC and William Borsdorf (Defendants), shall perform a conservation project as set forth below. The settlement value of the conservation project is twenty thousand dollars (\$20,000.00) and will offset the restoration of aquatic life and response costs sought by the State of Illinois in 2018 CH 20 (Jo Daviess County).

Starting in Fall 2019, and for four years thereafter, the Defendants will plant a cover crop on fields previously planted with soybeans and corn/silage, covering approximately 180-200 acres per year. Beginning in the Fall of 2019 and ending in the Fall of 2022, cover cropping is no longer a voluntary practice, but a commitment to plant and maintain 180-200 acres of cover crops per year to off-set environmental losses related to the alleged release of pollutants into the Yellow Creek stream system. The purpose of this project is to improve water quality of the Yellow Creek stream system by filtering farm and field runoff to the stream for an extended period of time. As stated by the Natural Resource Conservation Service (NRCS) on 12/19/2018 to the Defendants, "All cover crop strategies require research and consideration into cost, timing and labor. We or your agronomist can assist you with this and you may also consult the Midwest Cover Crops Council website at <http://mccc.msui.edu>." The Illinois Department of Natural Resources (IDNR) supports such collaboration to develop a Borsdorf Farm-specific cover crop planting plan as long as collaboration is consistent with Section III. D. 3.

The Defendants shall electronically submit the following to the Plaintiff contact persons identified in Section III.H of the Consent Order:

- Within ten (10) days of each annual Farm Service Agency (FSA) certification reporting period for crop seasons 2020, 2021 and 2022, the Defendants shall provide a proposed crop planting schedule. A planting schedule table is included in Attachment A.1, and the Defendants may use this planting schedule table as a template or a guide. At a minimum, the Defendants shall submit a copy of an FSA certification map that readily identifies subject fields and all proposed cropping activities with any applicable supplemental nutrient application information. The map shall readily identify fields subject to Spring termination of cover crops. Photos capturing field conditions immediately prior to termination shall also be provided at this time. Fields proposed for Fall cover crop planting should be labeled/highlighted in some way. Within fifteen (15) days of the entry of the Consent Order, the Defendants shall provide an FSA certification map for crop season 2019 that readily identifies subject fields and proposed cropping activities with any applicable supplemental nutrient/fertilizer application information. Fields proposed for fall cover crop planting should be labeled/highlighted in some way. If the Defendants adjust the planting schedule, changes will be reported with other submittals on December 1.
- By December 1 of each year of the conservation project, (2019 to 2022), the Defendants shall provide an annual report that includes the cover crop activity record for that particular year and a summary of all expenditures for the cover crop applications. If the expenditures are not available by December 1, a summary will be provided within 10 days of the Defendants'

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receipt of the information. If the Defendants are consulting with NRCS, then they shall submit the NRCS Illinois Conservation Practice Job Sheet 340 as the cover crop activity record portion of the annual report along with an FSA certification map that readily identifies fields subject to cover cropping activities and photos showing the sprouted cover crop of each field. If the Defendants are not consulting with NRCS, then they shall submit a cover crop record sheet, as set forth in Attachment A.2 hereto, along with an FSA certification map that readily identifies fields subject to cover cropping activities and photos showing the sprouted cover crop of each field.