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IN THE CIRCUIT COURT FOR CECIL COUNTY, MARYLAND

MARYLAND DEPARTMENT OF THE ENVIRONMENT,
1800 Washington Boulevard
Baltimore, Maryland 21230

Plaintiff,

v.

KILBY FARMS, LLC
785 Firetower Road
Colora, Maryland 21917

and

HARTLAND HOLDINGS, LLC
201 International Circle, Suite 230
Hunt Valley, Maryland 21030

Defendants.

* Civil Action No. C-07-CV-26-000234

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MARYLAND DEPARTMENT OF THE ENVIRONMENT'S CLOSING ARGUMENT IN SUPPORT OF ITS PETITION FOR CONSTRUCTIVE CIVIL CONTEMPT

The Maryland Department of the Environment ("Department"), through counsel, pursuant to Maryland Rule 2-648(a), Maryland Rules 15-201 *et seq.*, and Title 9, Subtitle 3, of the Environment Article, Maryland Annotated Code, submits this Closing Argument in Support of its Petition for Constructive Civil Contempt in the above-captioned matter against Kilby Farms, LLC and Hartland Holdings, LLC (collectively, "Defendants").

STATEMENT OF FACTS

This Court issued a Temporary Restraining Order ("TRO") on May 18, 2026, that directed the Defendants to immediately cease all unauthorized discharges of pollutants into waters of the State from the Kilby Farms Concentrated Animal Feeding Operation, located at 785 Firetower Road in Colora, Maryland ("CAFO"). On May 26, 2026, on agreement by the Parties and in accordance with Maryland Rule 15-504(c), this Court extended the TRO until June 9, 2026. On June 8, 2026, this Court approved the Parties' Consent to a Preliminary Injunction that prohibited the Defendants from discharging pollutants from the CAFO into waters of the State; required them to comply with the terms and conditions of the Parties' August 12, 2025, Settlement Agreement and Consent Order ("SACO"); required them to comply with Title 9, Subtitle 3, of the Environment Article, Maryland Annotated Code, and the Code of Maryland Regulations ("COMAR") 26.08.04.; and required them to comply with the terms and conditions of the General Discharge Permit for Animal Feeding Operations ("General Permit").

The SACO itself also requires the Defendants to operate the CAFO in compliance with the General Permit. *See* MDE Ex. A-2, p. 5. Among other requirements, the General Permit prohibits the discharge of any pollutants, including manure or process wastewater, to surface waters of the State from the CAFO production area, *see* MDE Ex. A-3, p. 6; mandates that all animal waste storage structures be designed, operated, and maintained to contain all animal waste from the animal confinement areas, including any runoff or direct precipitation from a 25-year, 24-hour storm, *see id.* at 21; and that clean stormwater be diverted from the production area in order to keep it separate from process

wastewater. *See id.* Additionally, the General Permit specifically requires that CAFOs divert stormwater from silage leachate and maintain at least one foot of freeboard in all impoundments of liquid animal manure. *See id.* at 16-17.

APPLICABLE LEGAL STANDARD

"[I]t is beyond cavil that 'the power to hold a person in contempt is inherent in all courts as a principal tool to protect the orderly administration of justice and the dignity of that branch of government that adjudicates the rights and interests of the people.'" *Usiak v. State*, 413 Md. 384, 395 (2010) (quoting *Smith v. State*, 382 Md. 329, 337 (2004)). Civil contempt "proceedings are generally remedial in nature and are intended to coerce future compliance." *State v. Roll*, 267 Md. 714, 728 (1973). Sanctions imposed in the civil context seek "to coerce compliance with court orders for the benefit of a private party or to issue ancillary orders for the purpose of facilitating compliance or encouraging a greater degree of compliance with court orders." *See Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 447 (2008) (quoting *Dodson v. Dodson*, 380 Md. 438, 448 (2004).

"Before a party may be held in contempt of a court order, the order must be sufficiently definite, certain, and specific in its terms so that the party may understand precisely what conduct the order requires." *Droney v. Droney*, 102 Md.App. 672, 684 (1995). The failure to comply with a court order alone is not sufficient to support a finding of contempt. *See Md. Dep't of Health v. Myers*, 260 Md. App. 565, 616 (2024). Rather, "[u]nder settled Maryland law, one may not be held in contempt of a court order unless the failure to comply with the court order was or is willful." *Dodson*, 380 Md. at

452. Willful conduct is "action that is '[v]oluntary and intentional, but not necessarily malicious.'" *Gertz v. Md. Dep't of Env't*, 199 Md. App. 413, 430 (2011) (quoting *Royal Inv. Group, LLC v. Wang*, 183 Md. App. 406, 451 (2008)). A contempt finding requires a showing that the inability to comply with a court order "arose 'from a deliberate effort or a wilful act of commission or omission by the alleged contemnor committed with the knowledge that it would frustrate the order of the court.'" *Dorsey v. State*, 356 Md. 324, 354 (1999) (quoting *In re Ann M.*, 309 Md. 564, 569 (1987)). In the context of an environmental enforcement action, "the willfulness of a violation" of an order is considered in terms of "the extent to which the existence of the violation was known but uncorrected by the violator, and the extent to which the violator exercised reasonable care." *See Gertz*, 199 Md. App. at 430–31 (quoting Md.Code Ann., Env't § 9–342(b)(2)(ii)(1)). "[E]vidence of an ability to comply, or evidence of a defendant's conduct purposefully rendering himself unable to comply, may…give rise to a legitimate inference that the defendant acted with the requisite willfulness and knowledge." *Dorsey*, 356 Md. at 352; *see also Fisher v. McCrary Crescent City, LLC*, 186 Md.App. 86, 114 (2009); *Att'y Grievance Comm'n v. Boyd*, 333 Md. 298 (1994) ("willfulness may be established merely by proof of a voluntary, intentional violation of a known legal duty"). A key inquiry for the court is whether the violator was on notice about specific violations and failed to remedy them despite having the ability to do so. *See Okoro v. Maryland Dep't of the Env't*, 223 Md.App. 198, 208-09 (2015). "Thus, the willfulness of an alleged contemnor's violation of a court-ordered duty to undertake environmental remediation

may be shown by his or her failure to perform that remediation despite the ability and opportunity to do so." *Gertz*, 199 Md. App. at 431.

Civil contempt must be proven by a preponderance of the evidence. *Bahena v. Foster*, 164 Md.App. 275, 286, 883 A.2d 218 (2005). "To prove by a preponderance of the evidence means to prove that something is more likely so than not so." *See Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 127 n.16 (2002). "In other words, a preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and…is more likely true than not true." *Id.* at (quoting the Maryland Pattern Jury Instructions 1:7 (3d ed.2000)).

ARGUMENT

THE DEPARTMENT HAS ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANTS DISCHARGED POLLUTANTS INTO WATERS OF THE STATE IN VIOLATION OF THIS COURT'S JUNE 8, 2026 PRELIMINARY INJUNCTION.

There can be no reasonable dispute that the Defendants discharged[1] pollutants from the CAFO into waters of the State. The Department has established by a preponderance of the evidence before this Court - through signed affidavits in its initial pleadings, and through inspection reports, photographs, and witness testimony presented during the October 13, 2026, contempt hearing - that the Defendants have discharged pollutants, in the form of animal manure, leachate, process wastewater, and sediment,

[1] "'Discharge' means: (1) [t]he addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State; or (2) [t]he placing of a pollutant in a location where the pollutant is likely to pollute." Md. Code Ann., Env't § 9-101(b) (West).

from the CAFO into waters of the State from at least September 1, 2025, through October 5, 2026.[2] "[P]ollution is a menace to public health and welfare, creates public nuisances, harms wildlife, fish, and aquatic life," and as a result, it is the policy of the State of Maryland to, among other things "protect, maintain, and improve the quality of water for public supplies, propagation of wildlife, fish, and aquatic life, and domestic, agricultural, industrial, recreational, and other legitimate beneficial uses." Md. Code Ann., Env't § 9-302(b)(2) (West).

The Department's evidence establishes that it has repeatedly and consistently provided the Defendants with notice of these discharges, instructed the Defendants on the specific and achievable corrective actions necessary to resolve the discharges, and documented the Defendants' failure to make any meaningful efforts to correct or address the discharges despite having the time and ability to do so. *See, e.g.* MDE Ex. A-6, p.3-5 (noting how manure, leachate, and process wastewater discharges have continued from previous inspections and directing the Defendants to perform specific corrective actions to resolve those discharges during MDE's June 15, 2026, inspection).

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[2] "'Pollutant' means: (1) Any waste or wastewater that is discharged from:...(ii) An industrial source; or (2) Any other liquid, gaseous, solid, or other substance that will pollute any waters of this State." Md. Code Ann., Env't § 9-101(g) (West). "'Animal waste' means liquid and/or solid waste from animal feeding, milking, holding, or other animal operations…includ[ing] but…not limited to, all manure… bedding, offal…or other particulate matter from the production area, and process wastewater." MDE Ex. A-3, p.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…watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities…Process wastewater also includes any water or stormwater which comes into contact with raw materials, products, or byproducts including manure, litter, leachate or runoff from all feed sources, feed (including…feed silage…), feed bunkers, milk…or bedding." *Id.* at p.9.

The Department's expert witness on CAFO permitting and compliance, Dave Bramble, verified and affirmed the accuracy of a signed affidavit submitted to this Court in which he stated that he personally conducted inspections of the CAFO and helped prepare reports for inspections conducted on September 1, 2025; September 16, 2025; December 4, 2025; December 22, 2025; January 13, 2026; February 20, 2026; February 25, 2026; March 10, 2026; and April 23, 2026. *See* MDE Ex. A-1, p.3. Mr. Bramble's affidavit further states that, during his inspections of the CAFO, he repeatedly and consistently observed discharges of manure, leachate, and process wastewater from the CAFO into Basin Run, which is a water of the State. *See id.* at 4-8.

Mr. Bramble stated in his affidavit that manure storage lagoons at the CAFO were inadequate to handle the amount of manure generated onsite because he repeatedly observed them at or near capacity and without the level of freeboard required by the General Permit. *See id.* This is consistent with the significant expansion of the CAFO that has taken place while the Defendants have been in control of its operation. *Compare* MDE Ex. A-4 *with* MDE Ex. A-5 (demonstrating the expansion of the CAFO from 650 animals to 2250 animals). Mr. Bramble further stated that the Defendants consistently failed to maintain the silage leachate collection system at the CAFO, allowing it to become clogged with silage debris and causing it to overflow and discharge into a tributary to Basin Run. *See id.* Mr. Bramble also stated that calf hutches at the CAFO routinely discharged manure and process wastewater downgradient along a concrete pad that flowed into Basin Run. *See* MDE Ex. A-1 at 5-8.

During the October 13, 2026, contempt hearing, Mr. Bramble further testified that the violations previously observed at the CAFO and described in his affidavit had continued unabated up to and including October 5, 2026. Mr. Bramble testified that, during inspections of the CAFO conducted after the entry of this Court's Preliminary Injunction, MDE continued to observe discharges of manure, leachate, and process wastewater from the CAFO into waters of the State of the same type and character previously documented and communicated to the Defendants, and that the Defendants made no meaningful efforts to stop or resolve those discharges. Specifically, MDE's inspections of the CAFO conducted on June 15, 2026; July 21, 2026; August 25, 2026; September 30, 2026; October 1, 2026; and October 5, 2026, documented, through personal observation and photographic evidence, that discharges of manure, process wastewater, and leachate from the CAFO into waters of the State continued unabated despite the Defendants' knowledge of these discharges and their ability to correct or prevent these discharges. *See* MDE Ex. A-6, A-7, A-8, A-9.

In its initial pleadings and during the October 13, 2026, contempt hearing, the Department also established by a preponderance of the evidence that the Defendants violated both the Preliminary Injunction and the SACO by discharging sediment from the CAFO into Basin Run. The Department's witness on erosion, sediment control, and water pollution, Michael Estes, verified and affirmed the accuracy of a signed affidavit submitted to this Court in which he stated that he conducted an inspection of the CAFO on June 15, 2026. *See* MDE Ex. C-1, p.3. Mr. Estes's affidavit further states that, during this inspection of the CAFO, he observed substantial site grading to the former pond

embankment, re-routing of the unnamed tributary to Basin Run that flows through the CAFO, and discharges of sediment into Basin Run. *See id.* at 3-4. Mr. Estes also stated that Defendants had not installed or implemented any sediment control devices in the area of disturbance, and that as a result, sediment was being discharged from the CAFO into Basin Run. *See id.* at 4. Mr. Estes estimated the total area of disturbance to exceed one acre, and that all grading and construction work had been performed without coverage under the General Permit for Stormwater Discharges Associated with Construction Activity ("General Construction Permit"). *See id.*

Mr. Estes' testimony at the October 13, 2026, contempt hearing confirmed the accuracy of the statements in his affidavit. During his testimony, Mr. Estes reiterated the observations he made during his June 15, 2026, inspection of the CAFO, described the photographs he took as part of his inspection, and directed the Defendants both of the violations themselves as well as the necessary and achievable corrective actions necessary in order to resolve the violations. *See* MDE Ex. C-3. Mr. Estes indicated that Benjamin Flahart was present during the June 15, 2026, inspection and that he notified him that the grading and construction work was in excess of one acre, had been conducted without required coverage under the General Construction Permit, and was performed without implementing any sediment or erosion controls. *See id.* at 3-5. Mr. Estes also testified that he personally observed sediment-laden water discharging from the CAFO into Basin Run. *See id.* at 10.

Mr. Estes further testified that he conducted additional inspections of the CAFO on August 25, 2026, and October 1, 2026, and observed site conditions to be substantially

similar to those he observed on June 15, 2026. *See* MDE Ex. C-3, C-4. During his August 25, 2026, inspection, Mr. Estes observed that the former pond area at the CAFO generally consisted of open and disturbed soil with only small areas where the Defendants had placed erosion control matting and grass seed. *See* MDE Ex. C-3. Mr. Estes stated in his report that the Defendants' failure to fully stabilize the steep slopes of the re-routed tributary channel made it highly susceptible to erosion. *See id.* Indeed, Mr. Estes stated that he had already observed the banks of this channel begin to erode, which caused sediment to be discharged from the CAFO into Basin Run. *See id.*

Finally, Mr. Estes testified that when he conducted a follow-up inspection of the CAFO on October 1, 2026, he observed conditions substantially similar to those previously noted and recorded in his June 15, 2026, and August 25, 2026, inspection reports. *See* MDE Ex. C-4. During his October 1, 2026, inspection, Mr. Estes observed the former dam area at the CAFO to still be largely unstabilized, causing sediment to actively discharge through the re-routed tributary into Basin Run. *See id.* Mr. Estes further testified that, on October 1, 2026, the Defendants had not obtained coverage under the General Construction Permit for the grading and construction work at the CAFO and that the Defendants had made no additional efforts to stabilize the disturbed soils or prevent the erosion that was resulting in pollutant discharges into Basin Run. *See id.*

THE DEFENDANTS' VIOLATION OF THE PRELIMINARY INJUNCTION IS WILLFUL BECAUSE THEY CONSENTED TO ITS TERMS, HAVE BEEN ON NOTICE OF THEIR VIOLATION, BUT HAVE FAILED TO MAKE ANY MEANINGFUL EFFORT TO COMPLY.

This Court's June 8, 2026, Preliminary Injunction explicitly and definitively states that the Defendants must comply with the terms and conditions of the SACO and are prohibited from the unauthorized discharge of pollutants from the CAFO into waters of the State. The Defendants expressly agreed to comply with these terms through the Parties' joint filing of their Consent to Preliminary Injunction. Additionally, terms of the consented Preliminary Injunction were not new to the Defendants; nearly ten months before its effective date, the Defendants agreed to comply with nearly identical terms as part of their execution of the SACO with the Department. *See* MDE Ex. A-2 (requiring the Defendants to comply with the terms and conditions of the General Permit and stating that "CAFOs are prohibited from discharging pollutants, including manure, litter, and process wastewater, to surface waters of the State from their production areas unless the operator demonstrates that an upset has occurred."). During the October 13, 2026, contempt hearing, the Defendants' owner and corporate representative, Benjamin Flahart, testified that he knew and understood the terms of both the SACO and the Preliminary Injunction when he agreed to be bound by both orders.

The Defendants' pollutant discharges described above and established by a preponderance of the evidence by the Department constitute willful violations of this Court's June 8, 2026, Preliminary Injunction. The Defendants voluntarily entered into the SACO with the Department, and testified that they knew and understood the terms of

that agreement when they signed it. The Defendants have been consistently reminded of their obligations under the SACO during each of the Department's inspections of the CAFO. The Department's witnesses testified that they personally observed ongoing and significant discharges of manure, leachate, process waste water, and sediment during each of their inspections of the CAFO. The Department's witnesses further testified that they documented these observations in inspection reports, provided photographic evidence of those discharges, notified the Defendants each time of their findings, and instructed them on the specific and achievable corrective actions that the Defendants must take to resolve the discharges. *See, e.g.* MDE Ex. A-6, p.3 (directing the Defendants to design and install a best management practice ("BMP") to divert manure and process wastewater discharges from the calf hutches away from the concrete pad that flows into Basin Run). Finally, the Department's witnesses also testified that they did not observe any meaningful attempts by the Defendants to correct or resolve the observed pollutant discharges from the CAFO.

Not only did the Defendants know and voluntarily agree to the terms of the SACO, but they also knew and consented to the terms of the Preliminary Injunction. Through the Parties' joint filing of the Consent to Preliminary Injunction, both MDE and the Defendants largely adopted the terms of the SACO and sought this Court's enforcement of its obligations. It cannot be argued, therefore, that the Defendants were ignorant of their obligation to prevent pollutant discharges from the CAFO into waters of the State or that this obligation was newly-enacted by this Court on June 8, 2026. Indeed, this Court may safely assume that the Defendants consented to the terms of the

Preliminary Injunction - and the SACO before that - because they both intended to and had the ability to comply. Considering the length of time the Defendants have been been subject to the obligations under the SACO, the Department's near constant reminder of these obligations, and this Court's incorporation of those obligations as part of the Preliminary Injunction, there can be no other inference than that the Defendants violated the Preliminary Injunction willfully and intentionally. *See Walker v. State*, 234 Md.App. 160, 170 (2017) (finding an inference of willfulness was appropriate where evidence showed the appellant signed multiple consent orders that acknowledged the existence and magnitude of his underlying obligations).

As the *Dorsey* opinion makes clear, this Court may make a legitimate inference that the Defendants acted with the prerequisite willfulness and knowledge because of the ample evidence before this Court that they had an ability to comply with the Preliminary Injunction but purposefully and continually failed to do so. *See Dorsey*, 356 Md. at 352. As applied to cases involving environmental remediation or enforcement, the *Gertz* opinion further instructs that "the willfulness of a violation" of an order is considered in terms of "the extent to which the existence of the violation was known but uncorrected by the violator, and the extent to which the violator exercised reasonable care." *See Gertz*, 199 Md. App. at 430–31.

The Department's evidence and testimony in this case clearly establishes that the Defendants knew of the pollutant discharges at the CAFO, consented to a preliminary injunction specifically prohibiting those same discharges, and then failed to make any meaningful attempt to correct or resolve them. Additionally, the Defendants did not

present any evidence at the hearing that they made any efforts to comply with the terms of the Preliminary Injunction or the SACO. Instead, the Defendants' testimony was limited to the amount of money they spent after assuming control of the CAFO before agreeing to the terms of the SACO and the Preliminary Injunction. Moreover, these expenses related primarily to the expansion of the CAFO, rather than any efforts to prevent, control, or cease the ongoing pollutant discharges into Basin Run. As such, the Department's evidence is uncontroverted. Each of the Department's inspection reports in this matter constitute separate and specific notices to the Defendants of the pollutant discharges at the CAFO. *See, e.g. Okoro*, 223 Md.App. at 208-09. The Department's inspection reports initially notified the Defendants of their violation of the SACO, but once the terms and obligations of the SACO were adopted by and converted to a Preliminary Injunction by this Court, the Department's inspection reports constituted notice of the Defendants' repeated, ongoing, and willful violation of the Preliminary Injunction. *See Gertz*, 199 Md.App. at 431 ("[T]he willfulness of an alleged contemnor's violation of a court-ordered duty to undertake environmental remediation may be shown by his or her failure to perform that remediation despite the ability and opportunity to do so."

CONCLUSION

WHEREFORE, it is requested that this Court issue an Order finding the Defendants in Contempt of this Court's June 8, 2026, Preliminary Injunction, and that Defendants can purge their Contempt through completion of the following:

A. Immediately implement appropriate best management practices ("BMPs") at the CAFO to cease all unauthorized discharges of pollutants into waters of the State. Specifically, Defendants shall cease, collect, divert, or prevent all manure, leachate, and process wastewater discharges into Basin Run and its tributaries from the manure storage lagoon, calf hutches, silage storage area, and the bermed wastewater collection area at the CAFO;

B. Immediately implement erosion and sediment controls necessary to prevent the discharge of pollutants from the CAFO into waters of the State, as well as stabilize all disturbed soils associated with the unauthorized construction and grading activity at the CAFO;

C. In accordance with Md. Code Ann., Env't § 9-323 and COMAR 26.08.04.09A, Defendants shall immediately submit an application to the Department for coverage under the General Construction Permit.

It is further requested that this Court impose any additional relief as the Court may deem appropriate, including payment of any monetary penalties for failure to purge the contempt, and hold regular status conferences to consider Defendants' evidence of compliance with the above.

Respectfully submitted,

/s/ Matthew D. Standeven
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of October, 2026, a copy of the Maryland Department of the Environment's Closing Argument in Support of its Petition for Constructive Civil Contempt was electronically filed using the Court's MDEC system and that a true and correct copy of the pleadings were served electronically on all registered counsel.

/s/ Matthew D. Standeven
Matthew D. Standeven