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IN THE CIRCUIT COURT FOR
CECIL COUNTY, MARYLAND

Maryland Department of the Environment,	*	
Plaintiff,	*	
v.	*	Case No.: C-07-CV-26-000234
Kilby Farms, LLC, *et al.*	*	
Defendants	*	

* * * * * * * * * * * * * * *

DEFENDANTS' CLOSING ARGUMENT

Defendants Kilby Farms, LLC ("Kilby"), and Hartland Holdings, LLC ("Hartland") (collectively herein "Defendants"), by and through their undersigned attorneys, hereby submit this memorandum of their Closing Argument pursuant to the Court's directive at the close of the Show Cause hearing on October 13, 2026. The Maryland Department of the Environment (hereinafter "MDE" or "Petitioner") has not proven by a preponderance of the evidence that either or both of the Defendants a clear and specific directive of this Court. Defendants therefor respectfully request that the Court deny MDE's Petition for Constructive Civil Contempt.

APPLICABLE STANDARD

Constructive civil contempt provides a coercive remedy for willful disobedience of an existing court order in order to protect the rights of the parties in the matter. *Dodson v. Dodson*, 380 Md. 438, 448 (2004) (quoting *State v. Roll and Scholl*, 267 Md. 714, 728 (1973)). A petitioner must prove that the party alleged to be in contempt acted, or failed to act, in violation of a specific directive in an identifiable court order issued prior to the

alleged act of disobedience. *Gertz v. Md. Dep't of Env't*, 199 Md. App. 413, 423 (2011). The contempt proceedings serve to determine whether there has been a willful failure to comply with specific directives in a clear court order. *Maryland Department of Health v. Myers*, 260 Md. App. at 615–26 (2024), *cert. den'd, sub nomine* at *Sanders v. Md. Dep't of Health*, 487 Md. 267 (2024).

Here, MDE bears the burden of proving constructive civil contempt by a preponderance of the evidence. *Gertz*, 199 Md. App. at 423 . To do so, it must establish knowledge of the specific directive allegedly violated, a failure to comply with that directive, and a willful intent to violate the court's directive. *Myers*, 260 Md. App. at 615–620. Civil contempt proceedings may not adjudicate the merits of the underlying action, punish a past violation, modify the existing court order, or impose new specific requirements as a method to "purge" the contempt finding or penalty. See, *Breona C. v. Rodney D.*, 253 Md. App. 67, 74–75 (2021)(quoting *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016). In the event a respondent is determined to have acted in contempt, the Court is required to issue a written contempt order specifying a sanction, a purge provision permitting avoidance of the sanction through definite, reasonably achievable conduct, and a mechanism by which the contemnor may purge the finding of contempt. Md. Rule 15-207(d)(2); *Breona C.*, 253 Md. App. at 74–75.

ARGUMENT

MDE's produced evidence that it disputes Defendants' regulatory compliance. This does not meet the State's burden of proof for constructive civil contempt. A contempt judgment requires materially more than proof that an inspector observed an

unauthorized discharge, an unstable condition, an incomplete control measure, or work MDE believes requires additional permits. MDE had the burden to prove, by a preponderance of the evidence, that each Defendant willfully violated a clear and specific command of this Court. *Md. Dep't of Health v. Boulden, et al.*, 266 Md. App. 39, 77–88 (2025), *aff'd*, 495 Md. 191 (2026); *Myers*, 260 Md. App. at 615–26; *Sayed A. v. Susan A.*, 265 Md. App. 40, 70–75 (2025). Maryland appellate courts have repeatedly emphasized that noncompliance alone is insufficient, that negligence is not contempt, and that willfulness must be established by evidence, not assumed. *Boulden*, 266 Md. App. at 79–88; *Dorsey v. State*, 356 Md. 324, 352–54 (1999).

The State is asking the Court to infer willfulness from:

a) Defendants' consent to the SACO and Preliminary Injunction ("PI"),
b) Defendants' knowledge of the requirements in the SACO and PI,
c) MDE's repeated inspections and inspection reports,
d) Continuation of certain conditions at the Kilby Farms operation on Firetower Road ("Kilby Farms Location").

However, the record establishes substantial investment and actions taken to improve compliance and bring the Kilby Farms Location into compliance. These include engineering work necessary to take action on MDE directives, repeated plan submissions, agency coordination, monitoring, physical corrective work, Best Management Plan ("BMP") modifications, revisions to the operation's Comprehensive Nutrient Management Plan ("CNMP") and their submissions, applying for and obtaining necessary permits to remove the onsite pond and dam, riprap installation, and seeding. That evidence is incompatible with MDE's characterization that Defendants made "no meaningful efforts" and is insufficient to establish a deliberate strategy of Defendants to

defeat this Court's Order.

The Court need not decide that every aspect of Defendants' farming operation complied with the applicable law, regulation, or permit. Even assuming one or more regulatory violations occurred, MDE's burden is to prove that the violation constituted the voluntary and intentional disobedience of a sufficiently definite court command. It did not do so.

As for specificity, the PI states generally that it "maintains" Defendants' obligations under the August 2025 Settlement Agreement and Consent Order, Environment Article Title 9, COMAR 26.08.04, and the AFO General Permit, and prohibits unauthorized pollutant discharges. It does not identify particular actions related to BMPs or other aspects of the farm operation. The SACO also does not specify actions to be taken other than the submission of plans and schedules to address issues MDE identified, submission of requisite Notices of Intent ("NOI") for general permit coverage as a Concentrated Animal Feeding Operation ("CAFO") (to include all other locations the Defendants utilize in conjunction with the Kilby Farms Location) by a stated date, and submission of a revised plans required by the CAFO permit by a stated date. MDE Ex. A-2, p. 5. MDE provided no evidence indicating that the Defendants did not submit the requisite plans, NOIs and revisions.

"An order granting an injunction shall set forth the reasons for its issuance; shall be specific in its terms; and shall describe in reasonable detail, *and not by reference to the complaint or other document*, the act sought to be required or commanded or restrained or forbidden." *Franzen v. Dubinok*, 45 Md. App. 728, 733-734 (1980)(*aff'd*

290 Md. 65 (1981)) (emphasis added). The directives of the PI and SACO do not identity particular actions to take related to specific BMPs, erosion and sediment control ("ESC") planning, stormwater general permitting, or methods to address runoff from the silage bunkers.

The record in this contempt proceeding demonstrates an active compliance process:

1. MDE issued a Dam Safety Notice of Violation on 1/13/2026. The NOV declared the dam unsafe, required engineering oversight and monitoring, directed repair or breach, required permit coordination, and allowed one year to complete approved repair or removal work. Upon learning that the Natural Resources Conservation Services ("NRCS") did not have time to prepare the necessary engineering plans for Defendants, a new engineer was retained to do the work. Defendants submitted weekly monitoring reports and proceeded through the agency review process. Testimony of J. Ainslie, M. Brubaker, and B. Flahart.

2. Engineering plans and calculations for the dam breach and stream restoration were submitted to MDE, the Cecil Soil Conservation District, NRCS, and other reviewing agencies on 4/30/2026. The Cecil Soil Conservation District approved those plans on 5/15/26. Testimony of M. Brubaker Def's Ex --.

3. MDE did not approve the Dam Breach Permit (No. 26-OB-0060) until 7/2/2026. *Id.* MDE's 7/21 inspection report acknowledged that no work had occurred after the 6/15 inspection, which was consistent with MDE's direction, and that Defendants continued weekly monitoring and reporting while awaiting authorization.

4. MDE's August inspections documented active breaching, a riprap-lined channel, diversion controls, and a contractor proceeding cautiously with awareness of sediment-control concerns. The permitted dam-breach work and stabilization was performed completed in August. Testimony of M. Brubaker Def's Ex --.

5. Defendants submitted an updated CNMP to MDE on August 20, 2026. Testimony of D. Moore.

These are not isolated or token acts. They are objective evidence of an ongoing, technically complicated compliance effort involving multiple regulatory agencies, engineering plans, approvals, engineers, contractors, and construction stages.

I. MDE DID NOT PROVE WILLFUL DISOBEDIENCE OF A CLEAR AND SPECIFIC COURT DIRECTIVE.

A. The burden remained on MDE to prove willfulness; it never shifted to Defendants to prove that they "did enough."

Constructive civil contempt must be proven by a preponderance of the evidence. *Boulden*, 266 Md. App. at 78; *Gertz*, 199 Md. App. at 423. But the required proposition is not merely noncompliance. MDE had to establish that Defendants' conduct was voluntary and intentional and that any inability to comply arose from a deliberate act or omission undertaken with knowledge that it would frustrate the Court's Order. *Boulden*, 266 Md. App. at 79; *Myers*, 260 Md. App. at 616–20 (*citing State v. Crawford*, 239 Md. App. 84, 111 (2018)); *Dodson*, 380 Md. at 452 ("a negligent failure to comply with a court order is simply not contemptuous in a legal sense").

Here, the burden did not shift to Defendants to prove that they "did enough." In *Sayed A.*, the Appellate Court rejected a burden-shifting approach under which the petitioner proved noncompliance and the alleged contemnor then had to show that he could not have done more. MDE must prove willful disobedience - the ordinary contempt standard does not shift that obligation to the respondent. *Sayed A.*, 265 Md. App. at 72–75. MDE's contention that "there can be no other inference" than willfulness improperly substitutes an assumption for proof. Consent to the SACO and injunction may establish notice of their terms, but it does not establish that every later condition observed by an inspector was intentionally created, knowingly maintained, immediately correctable, or understood to violate a directive of this Court. Further, MDE fails to acknowledge, as the Court must, that Defendants have raised other defenses to MDE's

allegations in this matter. The Defendants are not required to fully adjudicate the merits of the case in a contempt proceeding.

B. The Preliminary Injunction does not expressly command the detailed affirmative measures MDE now characterizes as purge conditions.

Maryland Rule 15-502(e) requires an injunction to be written, specific in its terms, and to describe in reasonable detail — "and not by reference to the complaint or other document" — the act mandated or prohibited. An order supporting contempt likewise must be sufficiently definite, certain, and specific for the respondent to understand precisely what conduct is required. *Royal Investment Group, LLC v. Wang*, 183 Md. App. 406, 447–48, 961 A.2d 665 (2008). The PI contains a broad prohibition against unauthorized discharges and broadly maintains obligations of the SACO and applicable statutes, regulations, and the CAFO General Permit. Defendants do not contend that such provisions are meaningless, but contempt must be tied to what that PI actually commanded. The PI did not specify:

- particular BMPs for the calf-hutch area or silage runoff location;
- a required design or completion date for each BMP;
- the precise acreage or limits of disturbance;
- the applicability of the agriculture exemptions in Title 4;
- whether separate ESC plan approval was required;
- whether SCD approval was sufficient for the pond or dam removal work; or
- a deadline for actions beyond those in the SACO.

MDE's requested relief would require the Court first to adjudicate those disputed regulatory predicates and then treat the resulting determination as though it had been expressly stated in the PI. Contempt is not a vehicle for retroactively enlarging an injunction.

MDE maintains that prohibiting "unauthorized discharges" and SACO/General

Permit compliance were known and sufficiently definite. Even if the Court accepts those as categorical prohibitions, MDE still must prove a particular discharge occurring after the PI was entered on June 8th which was unauthorized under the controlling permit and regulatory framework and that one or both Defendants willfully took action to cause that discharge or knowingly allowed it. Further, MDE must prove that the Defendant had the ability and opportunity to stop the discharge and that the failure to do so was voluntary and intentional. The broad wording in the PI and SACO does not eliminate those requisite elements for a finding of contempt.

C. MDE incorrectly asserts that Defendants have expanded the dairy operation at Kilby Farms Location and lack adequate waste capacity.

MDE's relies on its expert witness, David Bramble, for the claim that the Kilby Farm Location has been enlarged and lacks adequate storage capacity. However, Mr. Bramble testified that he is not involved in permit writing nor in the review of applications. He was unable to explain how he determined there was insufficient waste capacity based on the number of animals noted on the NOI submissions. In fact, his testimony seemed to rely on the fact that the 2018 NOI (MDE Ex. A-4) indicated 650 cattle while the 2025 NOI form listed 2,520 (MDE Ex. A-5). On cross examination, he acknowledged that the 2025 NOI specifically states that it involves three locations, not just the Kilby Farm Location. MDE Ex A-5, p. 2.

II. THE RECORD OF ACTIVE COMPLIANCE DEFEATS MDE'S WILLFULNESS THEORY.

A. The record before the Court is the opposite of that which supported an inference of willfulness in *Gertz*.

MDE relies heavily on the *Gertz* decision. There, a specific contempt order

established express plan and closure deadlines. After an initial plan was rejected, *Gertz* switched engineers and more than three years passed during which the respondent did little beyond occasionally visiting the engineer's office. The circuit court expressly found a deliberate strategy of delay - the defendant would "get around to it when he wanted to." *Gertz*, 199 Md. App. at 430–34. The *Myers* and *Boulden* opinions explain the limiting principle: *Gertz* supports an inference of willfulness where the evidence establishes deliberate foot-dragging, not where the record shows concrete efforts to address the problem. *Myers*, 260 Md. App. at 625–26; *Boulden*, 266 Md. App. at 87–88.

In this matter, Defendants did not allow years to pass without action. They kept the existing engineers working on MDE's areas of concern. Then, when NRCS backed away from drafting plans to remove the pond and dam, Defendants retained additional engineers to step in and do that work. They submitted engineering and other plans; responded to agency comments; coordinated with MDE, the Soil Conservation District, NRCS, and others; drained the farm pond to eliminate the risk of dam failure MDE was concerned about; obtained the dam breach permit; monitored and reported weekly (pursuant to the 1/13/2026 NOV which added to the existing tasks); performed permitted work; installed riprap; seeded disturbed areas; modified BMPs; and submitted an updated CNMP. Testimony of J. Ainslie, M. Brubaker, and B. Flahart. Even if the Court finds those efforts incomplete, imperfect, or insufficient to achieve regulatory compliance, or does not credit the testimony adduced by the Defendants, there is no evidence that they were deliberately dragging their feet to defy the Court's Order. See, *Myers*, 260 Md. App. at 626.

B. MDE's "continuous," "unabated," and "no meaningful effort" characterizations are not supported by the record before this Court.

MDE inspections establish discrete observations on particular dates and, in some instances, describe conditions as likely to cause a discharge during a rain event. These observations do not establish uninterrupted discharges every day from 6/8/2026 through 10/05/2026. The distinction matters because recurring regulatory conditions are not automatically a continuous, willful violation of a court order. While a discharge caused by a rain event may be a regulatory or permit violation, it is not a willful action intended to frustrate the purpose of this Court's Order.

MDE has emphasized its investigation into the black-pipe discharge on 6/15/2026. Its investigation was expressly inconclusive. Inspectors poured water into the building drains in an effort to show a connection to the stormwater drainage from the "black pipe." No discharge was observed from the pipe, leading MDE to conclude that further testing was necessary. That evidence may justify a continued investigation, but it does not establish an intentional continuing illegal discharge through the black pipe.

Likewise, the 6/15/2026 Water & Science Administration report estimated that the Defendants had disturbed more than one acre. No specific dimensions are identified. More importantly, the inspection report states that the date the alleged earth and stream disturbance activity commenced was unknown and it does not establish took the action complained of. The inspection was just seven (7) days after the PI was entered. Thus, the evidence cannot support a finding of willful action in violation of the PI occurring after 6/8/2026. The inspector also testified that he was unaware that the Soil Conservation District had approved plans for removing the pond and dam weeks prior to his inspection

and also unaware that there are agricultural exemptions in the code relieving the requirements for ESC plans and stormwater permit coverage for SCD approved work.

Assuming MDE's observations of specific conditions that could result in discharges or that may show evidence of discharges during rain events, those observations establish a technical condition on those dates. They do not erase the intervening work Defendants were engaged in to facilitate operation of the farm in compliance with the PI and other applicable requirements. There was substantial work being performed and additional work planned in compliance with the PI and SACO. Evidence that later erosion may occur could support further corrective action, but it does not transform the preceding work into "no meaningful effort."

C. The operational evidence likewise reflects ongoing mitigation and an approved implementation schedule.

The Defendants submitted an Improvement Plan as required. This contemplated staged capital improvements. Testimony of J. Ainslie and B. Flahart. MDE approved a schedule extending completion of silage-leachate system and additional waste storage work to 9/30/2026, while also requiring interim maintenance and overflow prevention. That agency-approved schedule is inconsistent with treating conditions that existed prior to 9/30/2026 as proof that Defendants willfully acted to violate the PI.

While MDE's 7/21/2026 inspection report (Exhibit B-3) identified continuing concerns, but it also documented improvements: relocation of calf hutches, creation or modification of collection areas, and a potential new BMP scheduled for September. It further recognized that additional improvements remained under development. Those observations may reflect incomplete compliance, but they contradict the MDE's

assertion that nothing meaningful had changed.

Defendants also submitted the requested CNMP revision and updated NOI for the newly finalized MDE CAFO General Permit. Testimony of D. Moore. A submission subject to agency review may not establish final approval, but it is affirmative compliance evidence and is inconsistent with deliberate abandonment.

III. MDE'S ALLEGATION-BY-ALLEGATION PROOF BELIES THE ASSERTION OF CONTEMPTUOUS INTENT.

MDE presented evidence of recurring operational deficiencies and pathways by which manure, leachate, or process water could discharge during precipitation. The Court may credit those observations without finding contempt as the allegations do not provide proof that either Defendant intentionally violated a known court directive. MDE's evidence may support future regulatory enforcement, or additional prospective directives, but it does not establish beyond the required preponderance of the evidence that the conditions resulted from a deliberate choice to frustrate the Court's Order.

A. Dam, sediment, and stabilization conditions.

The 1/13/2026 NOV compelled action based on MDE assertions that the existing dam was unsafe. It simultaneously required engineering, agency coordination, permits, monitoring, emergency measures, and eventual repair or breach. Defendants' work before and after the PI occurred in that regulatory context.

MDE's theory treats earth disturbances undertaken to satisfy the Dam Safety directive as evidence of contempt because MDE maintains that separate ESC and General Permit coverage for stormwater associated with construction activity were necessary. Even if MDE's ultimate permit interpretation is correct, the overlapping directives and

approvals negate an inference of contemptuous intent. The 5/15/2026 SCD approval of the 4/30/2026 engineering plans for removal of the pond and dam show the Defendants were actively pursuing compliance with the PI. Title 4 of the Environment Article exempts agricultural land management practices from the ESC plan approval requirements MDE seeks to enforce. MD. CODE ANN., ENVIR. § 4-102. In addition, COMAR 26.17.02.01B states:

> These regulations for stormwater management apply to the development or redevelopment of land for residential, commercial, industrial, or institutional use, *but do not apply to agricultural land management practices*.

COMAR 26.17.02.01B. This includes exemption from coverage under the General Permit coverage for stormwater associated with construction activity 20-CP-A. The 7/2/2026 Dam Safety Permit, and continuing MDE coordination demonstrate efforts to comply despite the genuine approval dispute over the agricultural exemption. This is not indicative of defiant actions to willfully violate the PI.

B. Ability to comply and expenditure evidence.

MDE argues that expenditures and retention of qualified engineers prove that Defendants had the ability to comply but chose expansion instead. There is nothing to support this inference.

Aggregate historical spending does not prove liquid funds, immediate availability, engineering feasibility, contractor availability, permit authority, or the present ability to implement every demanded measure simultaneously. In *Myers*, the Appellate Court rejected the assumption that an expenditure or theoretical access to money established immediate ability to comply; ability must be supported by evidence, not conjecture.

Myers, 260 Md. App. at 619–20

Moreover, the retrieved expenditure summary identifies substantial pond-project costs, including equipment, riprap, engineering, monitoring, and related work, including hiring additional engineers to perform the work for the dam removal permit. It does not support a categorical finding that expenditures were devoted "primarily" to expansion rather than compliance. At most, spending may show resources were used for several purposes, including daily operations. MDE still had to prove a purposeful choice by each Defendant to withhold resources from a particular, immediately achievable court-ordered act.

IV. MDE DID NOT PROVE CONTEMPTUOUS ACTIONS WERE TAKEN BY A SPECIFIC DEFENDANT NOR BY BOTH DEFENDANTS.

Civil contempt is an adjudication against a particular alleged contemnor. MDE's closing repeatedly treats Kilby and Hartland collectively, and does not separately identify:

1. the clear command directed to each entity;
2. the particular act or omission committed by each;
3. the knowledge possessed by each;
4. the resources or unilateral authority available to each; or
5. the evidence establishing each entity's voluntary and intentional disobedience.

As noted by Defendants in the Show Cause hearing, MDE's petition makes no assertion that the alleged violations resulted from willful actions by Defendants. Further, the evidence presented does not indicate which Defendant committed which alleged violations that it claims supports the Petition for Contempt. Ownership, operation, contracting authority, financial capacity, and permit responsibility cannot simply be merged because the entities were jointly named in the injunction. Absent entity-specific

allegations and proof by a preponderance of evidence, the Court cannot find that MDE met its burden against Kilby or Hartland. Likewise, the Court cannot find that both entities committed willful acts in defiance of the Court's directives.

V. MDE'S REQUESTED RELIEF DOES NOT SATISFY THE REQUIREMENTS FOR CONSTRUCTIVE CIVIL CONTEMPT.

A valid constructive civil-contempt order must impose a sanction, provide a distinct purge provision permitting the contemnor to avoid that sanction through a definite act within its reasonable ability, and coerce future compliance. *Breona C.*, 253 Md. App. at 74–75; *Myers*, 260 Md. App. at 619–20. A constructive civil contempt proceeding cannot result in an order that punishes past conduct. A court likewise may not use contempt to impose materially new obligations without the procedure required to modify the underlying order. *Sayed A.*, 265 Md. App. at 77–83. Importantly, the purge provision cannot require new actions not specified in the order the Petitioner seeks to enforce.

MDE's proposed terms fail this test:

- Requiring "appropriate BMPs" does not sufficiently identify the required design, location, performance standard, or provide a completion date.
- Requiring "immediate stabilization" does not distinguish which areas allegedly require further work or account for time required for engineering, obtaining permits, weather delays, or agency-coordination dependencies (e.g., Defendants are still awaiting a decision on the waterway construction application required to complete the stream restoration work necessitated by removing the pond and dam which was filed with MDE but requires coordination with the US Army Corps of Engineers).
- Requiring "CNMP revision" ignores the fact that Defendants submitted an updated CNMP was on 8/20/2026 and cannot take further action until completes its review.

- The requirement for "ESC and Stormwater General Permit applications" depends on resolution of defenses raised regarding statutory and regulatory exemptions applicable to agriculture activity.
- A status conference may be useful for prospective case management, but it is not a substitute for proof of existing contempt.

If the Court concludes that additional direction is warranted, the proper remedy is a prospective clarification or modification identifying concrete tasks, responsible parties, standards, dependencies, and reasonable deadlines - which is not appropriate in the context of a contempt proceeding.

CONCLUSION

The evidence from the Show Cause hearing established that serious regulatory and environmental issues have existed at the Kilby Farm Location for many years, and some may still need work to resolve. MDE did not establish that Kilby Farms, LLC or Hartland Holdings, LLC, individually, or together, willfully, and intentionally disobeyed a specific directive of this Court.

The record instead documents an active, if disputed and imperfect, course of compliance: engineers retained; monitoring performed; plans prepared and circulated; Soil Conservation District review and approvals obtained; a Dam Safety Permit pursued and issued; BMPs installed that may need to be modified; the pond and dam have been removed; a riprap channel installed per approved plans pending a waterway construction permit; soil stabilization and seeding undertaken; and a revised CNMP submitted. Maryland contempt law does not permit that evidence to be disregarded, and willfulness simply presumed based on evidence of statutory or regulatory violations or ongoing MDE concerns over dairy operations at the Kilby Farms Location.

For those reasons, Defendants respectfully request that the Court:

1. **DENY** MDE's Petition for Constructive Civil Contempt as to both Defendants;

2. Decline to impose penalties for past conduct or new regulatory obligations through a constructive civil contempt proceeding; and

3. In the alternative, if MDE seeks further clarification or specificity, require the agency to satisfy the requisite standards for modifying the existing injunction, allow the Defendants the opportunity to respond to such a request, and thereafter, if the Court finds it necessary, to enter prospective, definite, reasonably achievable directives without a finding of contempt.

Respectfully submitted,

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October 27, 2026

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 27th day of October 2026, a true and accurate copy of the foregoing Closing Argument was filed and served in accordance with Maryland Rules 1-321 and 20-201 via the MDEC e-filing system and electronic mail to:

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