

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DARE FARMS LLP (Property Identification)	
Number 09-08-13-100-001)	
)	
Petitioner,)	
)	
v.)	PCB 20-041
)	(Tax Certification)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	
)	

To: See attached service list

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board an **AMENDED RECOMMENDATION OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY IN RESOLUTION OF THE PETITION TO CONTEST**, copies of which are herewith served upon you.

Illinois Environmental Protection Agency

By: /s/ Michael S. Roubitchek
Michael S. Roubitchek
Deputy General Counsel
Division of Legal Counsel

DATED: May 26, 2021

Michael S. Roubitchek
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544
Mike.Roubitchek@Illinois.gov

THIS FILING IS SUBMITTED ELECTRONICALLY

SERVICE LIST

DARE FARMS LLP
Ronald Weber
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167 West Elm Street
Canton, Illinois 71520
rweber@fwslawyers.com

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ILLINOIS POLLUTION CONTROL BOARD – HEARING OFFICER
Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
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ILLINOIS DEPARTMENT OF REVENUE
101 West Jefferson
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Springfield, Illinois 62794
REV.PropTaxApp@illinois.gov

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Dare Farms LLP)
(Property Identification Number) **PCB 20-41**
09-08-13-100-001)) **(Tax Certification)**
)

**AMENDED RECOMMENDATION OF THE ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY IN RESOLUTION OF THE
PETITION TO CONTEST**

The Illinois Environmental Protection Agency (“Illinois EPA”) hereby files its Amended Recommendation pursuant to Section 125.204 of the regulations of the Illinois Pollution Control Board (“Board”), 35 Ill. Adm. Code 125.204.

This Amended Recommendation is the result of an agreement between the Illinois EPA and Dare Farms LLP (“Petitioner”) in resolution of the Petition to Contest that was filed by Petitioner in this matter on March 20, 2020.

PROCEDURAL HISTORY

1. On July 30, 2018, and supplemented on September 25, 2018, November 7, 2019, and November 20, 2019, the Illinois EPA received a request from Dare Farms LLP (log number TC-140107) for an Illinois EPA recommendation regarding the tax certification of water pollution control facilities pursuant to 35 Ill. Adm. Code 125.204.¹
2. The facility's address is: Dare Farms LLP
27985 N. Dare Road
Canton, IL 61520

The proposed water pollution control facilities in the request are located in the NW ¼ of Section 13, T7N, R4E of the 4th P.M. in Fulton County, at the above

¹ Pursuant to 35 Ill. Adm. Code 101.302(k) regarding documents that are already readily available to the Board, all documents that are already in possession of the Board are not being attached as exhibits to this Amended Recommendation, including all prior filings in this matter and all Board/Hearing Officer Orders.

street address and consist of the following waste management systems, structures and devices:

- One reinforced concrete manure pit measuring approximately 196 ft. x 48 ft. x 10 ft. deep, the precast concrete slatted flooring over the entire area of this pit and its supporting columns and precast beams, and approximately 500 ft of perforated plastic foundation drainage pipe (Form-A-Drain) and approximately 150 ft of 4-inch diameter plastic field tile (updated dimensions in Attachment A – emails dated November 7, 2019 and November 20, 2019);
- One welded steel manure storage tank (Slurrystore) measuring approximately 101 ft. (diameter) x 23 ft. (height), with a center agitation system and side mount pump system;
- One reinforced concrete livestock feedlot measuring 261 ft. x 105 ft., with 8-inch high perimeter curbing, a concrete ramp measuring 10 ft. x 12 ft. to convey feedlot runoff to a lidded reinforced concrete reception pit measuring 12 ft. x 42 ft. x 10 ft. deep, and having a fibrous waste cutter pump for manure transfer to the Slurrystore (updated dimensions for reception pit in Attachment A – email dated November 7, 2019);
- One concrete and wood frame four-bay animal composting shed measuring 18 ft. x 50 ft;
- A solid pack building measuring 100 ft. x 200 ft, with concrete curbing of varying thickness but measuring 4 ft. x 400 ft. found on the north and south sides of the solid pack building used to maintain manure within the building;
- A covered feed storage building measuring 80 ft. x 150 ft;
- A solid pack building with open front and back sides measuring 50 ft. x 96 ft.;
- A cattle loafing building measuring 30 ft. x 72 ft.; and
- A cattle loafing building measuring 33 ft. x 108 ft.

3. On January 7, 2020, the Illinois EPA filed its initial Recommendation in this matter. In its initial Recommendation, the Illinois EPA recommended that a portion of Petitioner's facilities be deemed eligible for tax certification, and a separate portion of Petitioner's facilities be deemed not eligible for tax certification.

4. By Order dated January 16, 2020, the Board directed Petitioner to file a Petition to Contest by February 18, 2020, if it wished to contest the Illinois EPA's denial of a portion of the facilities.
5. On February 13, 2020, Petitioner filed its Petition to Request with the Board.
6. By Order dated February 20, 2020, the Board accepted the Petition as timely filed, but ruled that the Petition to Contest was deficient. Petitioner was ordered to file an amended petition by March 23, 2020.
7. On March 20, 2020, Petitioner filed its Amended Petition for Review and Reconsideration with the Board.
8. On April 13, 2020, the Illinois EPA filed with the Board "Respondent's Motion for Extension of Time to File the Record." The Illinois EPA's request for additional time to file the Record was based on delays associated with the COVID-19 pandemic.
9. By Order dated April 16, 2020, the Board accepted Petitioner's Petition to Request for hearing. Additionally, the Board granted the Illinois EPA's Motion for Extension of Time to File the Record until June 1, 2020.
10. By a separate Order dated April 16, 2020, the Board found and certified that the facilities which the Illinois EPA had recommended for approval in its initial Recommendation, were pollution control facilities.
11. On May 18, 2020, the Illinois EPA filed with the Board "Respondent's Second Motion for Extension of Time to File the Record."

12. By Hearing Officer Order dated May 21, 2020, the Board Hearing Officer granted the Illinois EPA's Motion for Extension of Time to File the Record until July 1, 2020.
13. By Hearing Officer Order dated June 9, 2020, the parties represented that settlement negotiations had started, and the Board Hearing Officer indefinitely extended the Illinois EPA's deadline to file the Record until the "Agency reopens."
14. In subsequent Hearing Officer Orders, dated August 10, 2020, November 10, 2020, February 10, 2021, and April 12, 2021, the parties indicated that settlement negotiations were progressing.
15. The Illinois EPA and Petitioner have reached a negotiated agreement to resolve the Petition to Contest and negate the need for a contested hearing. This negotiated agreement is contained in the Illinois EPA's Amended Recommendation below. Upon the Board's acceptance of the Illinois EPA's Amended Recommendation, Petitioner has indicated that it is prepared to dismiss its Petition to Contest.

AMENDED RECOMMENDATION IN RESOLUTION OF THE PETITION TO CONTEST

16. The Illinois EPA's initial January 7, 2020 Recommendation is incorporated by reference into this Amended Recommendation.
17. On August 6, 2020 and November 6, 2020, the Illinois EPA received supplemental documentation from Petitioner (supplemental log number TC-140107, Exhibit A) regarding Petitioner's request for an Illinois EPA

recommendation for the tax certification of water pollution control facilities pursuant to 35 Ill. Adm. Code 125.204.

18. Section 11-10 of the Property Tax Code, 35 ILCS 200/11-10 (2014), and Section 125.200(a) of the Board's regulations, 35 Ill. Adm. Code 125.200(a), define "pollution control facilities" as:

any system, method, construction, device or appliance appurtenant thereto or any portion of any building or equipment, that is designed, constructed, installed or operated for the primary purpose of: eliminating, preventing, or reducing air or water pollution ...or treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without treatment, pretreatment modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property.

19. In order to receive preferential tax treatment as pursuant to 35 ILCS 200/11-5 (2014), pollution control facilities must be certified as such by the Board, 35 ILCS 200/11-20 (2014) and 35 Ill. Adm. Code 125.200(a).
20. Upon receipt of a tax certification application, the Illinois EPA must file a recommendation on the application with the Board, 35 Ill Adm. Code 125.204(a).
21. Based on the information in the application and the purpose of the facilities, it is the Illinois EPA's engineering judgment that a portion of the described facilities may be considered "pollution control facilities," pursuant to 35 Ill. Adm. Code 125.200(a), with the primary purpose of eliminating, preventing, or reducing water pollution, or as otherwise provided in 35 Ill. Adm. Code 125.200, and are eligible for tax certification from the Board. Specifically, the Illinois EPA recommends that the following portion of the facilities be deemed eligible for tax certification from the Board:

Facilities Already Certified for Eligibility Per April 16, 2020 Board Order

- One reinforced concrete manure pit measuring approximately 196 ft. x 48 ft. x 10 ft. deep, the precast concrete slatted flooring over the entire area of this pit and its supporting columns and precast beams, and approximately 500 ft of perforated plastic foundation drainage pipe (Form-A-Drain) and approximately 150 ft of 4-inch diameter plastic field tile;
- One welded steel manure storage tank (Slurrystore) measuring approximately 101 ft. (diameter) x 23 ft. (height), with a center agitation system and side mount pump system;
- One reinforced concrete livestock feedlot measuring 261 ft. x 105 ft., with 8-inch high perimeter curbing, a concrete ramp measuring 10 ft. x 12 ft. to convey feedlot runoff to a lidded reinforced concrete reception pit measuring 12 ft. x 42 ft. x 10 ft. deep, and having a fibrous waste cutter pump for manure transfer to the Slurrystore;
- One concrete and wood frame four-bay animal composting shed measuring 18 ft. x 50 ft.;
- The concrete curbing of varying thickness but measuring 4 ft. x 400 ft. found on the north and south sides of the 100 ft. x 200 ft. solid pack building used to maintain manure within that building.

Additional Facilities Recommended for Certification by Illinois EPA in Resolution of the Petition to Contest

- A covered feed storage building measuring 80 ft. x 150 ft, originally identified as the same in the Illinois EPA's January 7, 2020 initial Recommendation;
- A 20,000 square foot open sided pole building, measuring 100 ft. x 200 ft. with roof, originally identified as the solid pack building in the Illinois EPA's January 7, 2020 initial Recommendation.

22. The remaining three facilities identified in Petitioner's initial July 30, 2018 application received a "denial" recommendation within Illinois EPA's initial recommendation of January 7, 2020. Based on the information in the application and the purpose of the facilities, it is the Illinois EPA's engineering judgment that a portion of the described facilities may **not** be considered "pollution control facilities", pursuant to 35 Ill. Adm. Code 125.200(a), because these portion of the

facilities do not have the primary purpose of eliminating, preventing, or reducing water pollution, or as otherwise provided in 35 Ill. Adm. Code 125.200, and are **not** eligible for tax certification from the Board. Specifically, this Amended Recommendation by the Illinois EPA retains its initial recommendation that the following portion of the facilities be denied tax certification from the Board:

- The solid pack building with open front and back sides measuring 50 ft. x 96 ft.;
- The cattle loafing building measuring 30 ft. x 72 ft.; and
- The cattle loafing building measuring 33 ft. x 108 ft.

The primary purpose of these facilities is to provide an area for feeding animals, keeping animals clean, sheltering animals from outside weather conditions, reduce bedding needs and is not pollution control. The *Beef Housing & Equipment Handbook*, Third Edition by Midwest Plan Service (April 1979) (MWPS-6) states that buildings protect cattle and feeding equipment and allow for better feeding efficiencies. MWPS-6 also states that buildings prevent feed from blowing, protect feed and equipment from rain and snow, and provide the cattle shelter during the summer and winter. *Beef Production*, Fourth Edition by Diggins, Bundy and Christensen (1984) states that research has shown that efficient animal production can be improved through closer control over the production environment and confinement systems have been most successful in the area of improved production efficiency allowing for more economical gains with less manual labor. The above information confirms the primary purpose of the above listed structures are not pollution control. Accordingly, the Illinois EPA recommends that these portions of the facility be denied tax certification by the Board.

23. As part of the negotiated agreement to resolve the Petition to Contest, the Illinois EPA and Petitioner have agreed that the portion of Petitioner's facilities listed in Paragraph 22 above are not eligible for tax certification. Upon the Board's acceptance of the Illinois EPA's Amended Recommendation, Petitioner has indicated that it is prepared to dismiss its Petition to Contest.

WHEREFORE, the Illinois EPA recommends that the Board issue the requested tax certification for a portion of the facilities and deny the requested tax certification for a portion of the facilities. The applicant has 35 days after the date of service to file a petition with the Board to contest the Illinois EPA's recommendation for the portion of the facilities where the Illinois EPA is recommending that the tax certification be denied, as discussed above.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: /s/ Michael S. Roubitckek
Michael S. Roubitckek
Assistant Counsel
Division of Legal Counsel

Dated: May 26, 2021

Illinois Environmental Protection Agency
1021 North Grand Ave. E.
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

CERTIFICATE OF SERVICE

I, the undersigned, on affirmation state the following:

That I have served the attached AMENDED RECOMMENDATION OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY IN RESOLUTION OF THE PETITION TO CONTEST by e-mail upon Ronald Weber at the e-mail address of rweber@fwslawyers.com, upon Don Brown at the e-mail address of don.brown@illinois.gov, upon Carol Webb at the e-mail address of Carol.Webb@Illinois.gov, and upon the Illinois Department of Revenue at REV.PropTaxApp@illinois.gov.

That my e-mail address is Mike.Roubitckek@Illinois.gov.

That the number of pages in the e-mail transmission is sixty-one (61).

That the e-mail transmission took place before 5:00 p.m. on the date of May 26, 2021.

/s/ Michael S. Roubitckek

May 26, 2021

EXHIBIT A



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

Memorandum

To: Mike Roubitchek, Division of Legal Counsel

From: Darin E. LeCrone, P.E., Manager, Industrial Unit, Permit Section, Division of Water Pollution Control DEL

Date: **FEB 25 2021**

Re: Dare Farms LLP - Canton
Recommendation of Tax Certification
Log No.: TC-140107
BOW ID No.: W0578040006
Property Index Number: 09-08-13-100-001

The Bureau of Water received a request on July 30, 2018 from Dare Farms LLP, having a principal place of business at 27779 N. Dare Road, Canton, IL 61520, for an Illinois EPA recommendation regarding the tax certification of water pollution control facilities pursuant to 35 Il. Adm. Code 125.204. On January 8, 2020, the Bureau of Water provided a recommendation regarding the certification request and in that recommendation were denials for certain facilities that were determined not to be considered "Pollution Control Facilities" under 35 IAC 125.200(a). The Bureau of Water hereby offers a supplemental recommendation that reflects changes to the Bureau of Water's earlier recommendation dated January 8, 2020. This recommendation is based on information provided by the applicant subsequent to their petition to contest the Board's order of January 16, 2020. This information, provided on August 6, 2020 and November 6, 2020, provided a basis for the Bureau of Water to make a supplemental case specific recommendation regarding the primary purpose of certain facilities. We offer the following recommendation.

The water pollution control facilities in this request include the following:

Dare Farms LLP
27985 N. Dare Road
Canton, IL 61520

NW 1/4 of Section 13, Township 7-North, Range 4-East of the 4th PM in Fulton County.

The covered feed storage building measuring 80 ft. x 150 ft., originally identified as same on the Bureau of Water recommendation dated January 8, 2020, and

The 20,000 sq. ft. open sided pole building measuring 100 ft. x 200 ft. with roof, originally identified as the solid pack building on the Bureau of Water recommendation dated January 8, 2020.

These facilities are further described in the enclosed applications and supporting documents.

Based on the information included in this submittal, it is our engineering judgment that the above proposed facilities may be considered "Pollution Control Facilities" under 35 IAC 125.200(a), with the primary purpose of eliminating, preventing, or reducing water pollution, or as otherwise provided in this section, and therefore eligible for tax certification from the Illinois Pollution Control Board. The Bureau of Water therefore recommends that the Board issue the requested tax certification for these facilities.

2125 S. First Street, Champaign, IL 61820 (217) 278-5800
2009 Mall Street Collinsville, IL 62234 (618) 346-5120
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000
595 S. State Street, Elgin, IL 60123 (847) 608-3131

2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022
4302 N. Main Street, Rockford, IL 61103 (815) 987-7760

Page No. 2
Tax Certification Recommendation
Log No. TC-140107

If you have any questions regarding the above, please contact Darren Gove at 217/782-0610.

DRG:TC-140107_Supplemental_Tax Cert Recommendation_30Jul18.docx

cc: Tax Cert File

DARE FARMS

SUPPLEMENTAL
DOCUMENTATION

AUGST 6, 2020

Roubitchek, Mike

From: Ron Weber <RWeber@fwslawyers.com>
Sent: Thursday, August 6, 2020 1:43 PM
To: Roubitchek, Mike
Cc: Ron Weber
Subject: [External] Dare Farms
Attachments: Consent Order Filed 04.07.2011.pdf; Dare Farms.pdf; Sketches.pdf; 8258.jpg; 8259.jpg; 8255.jpg; 8254.jpg; 8253.jpg; 8252.jpg; 8251.jpg; 8250.jpg; 8248.jpg; 8247.jpg; IMG_2430.jpg; IMG_0793.JPG; IMG_2427.jpg; IMG_2429.jpg

Mike,

I apologize that this is not better coordinated, but wanted you to have these to look at. I will try to put together a more coordinated narrative.

Please see attached.

Regarding the Consent Order, specific reference to page 5, letter D, Future Compliance, number 1.

I will give you a call at 2:00.

Thank you,

Ronald Weber
Froehling, Weber & Schell, LLP
167 West Elm Street
Canton, Illinois 61520
Phone: (309) 647-6317
Fax: (309) 647-6350

rweber@fwslawyers.com

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In reference to the 100x200 building, prior to its construction in 2009, the area where the building is located consisted of approximately 150 x 250 feet of open concrete cattle yards. These pens drained into an earthen lagoon that was in every way too small. It was full all the time. Additionally the lagoon was a huge contributor to the odor issues we were facing. Before this building was constructed we were able to feed approximately 500 cattle in the area. Having continued experience with commercial custom feed yards from around the country, understanding that open pens aren't as valuable based on our experience, we assign 30 cents per day for yardage in these pens. This totals \$54,750 per year in revenue. When we built the building we had fully intended to continue to house 500 cattle in this new structure. We quickly realized that this was not going to work, and since then the building has been used to keep around 300 head. We assume manure handling and feeding costs are very similar in the two facilities. With the addition of the building we have added expenses of the cost of approximately 7 cornstalk bales per week at a cost of \$30 per bale, as well as a large building payment and tax bill. We recognize the added value of the facility and assign yardage based on our experience at 40 cents per day. Total revenue from the building now stands at \$43,800 per year. However we now spend \$10,950 per year on bedding, approximately \$17,000 per year on building payments and maintenance, and per year on taxes. As you can see we have added value for increased animal comfort and performance by adding 10 cents per day to our revenue, but it is not economical compared to the added operating costs. Additionally one of the contributing factors to the reduced capacity, is parts of the building are used to store manure periodically, when land application isn't an option. We find particularly during the summer, up to 30 percent of the building is used to store manure. The pens all have concrete dividers that help serve as flexible manure storage. We also have come to realize, the other three buildings in question are not likely able to be considered for this tax exemption. They are not used for manure storage, mostly serving the role of animal comfort; however they are usefully in diverting large amounts of water that would otherwise become in contact with manure.

The 100x200 building has eliminated a dangerous polluting lagoon, as well as diverted millions of gallons of clean rain water. Additionally it provides manure storage when needed. All this has come with approximately \$10,950 per year less income as well as \$27,950 per year in increased operating costs, plus the cost of the taxes.

We realize this is a special situation and agree with you that not everyone with a livestock building should be tax exempt, but we hope that you will consider how this building was constructed to eliminate a stinky undersized lagoon, and to operate a more environmentally sound operation that can better utilize its nutrients in a more agronomic way.

We include pictures of the facility prior to the buildings construction and after construction. Please notice the full lagoon and its potential problems. And currently the grassy field where the lagoon used to be.

SKETCH/AREA TABLE ADDENDUM

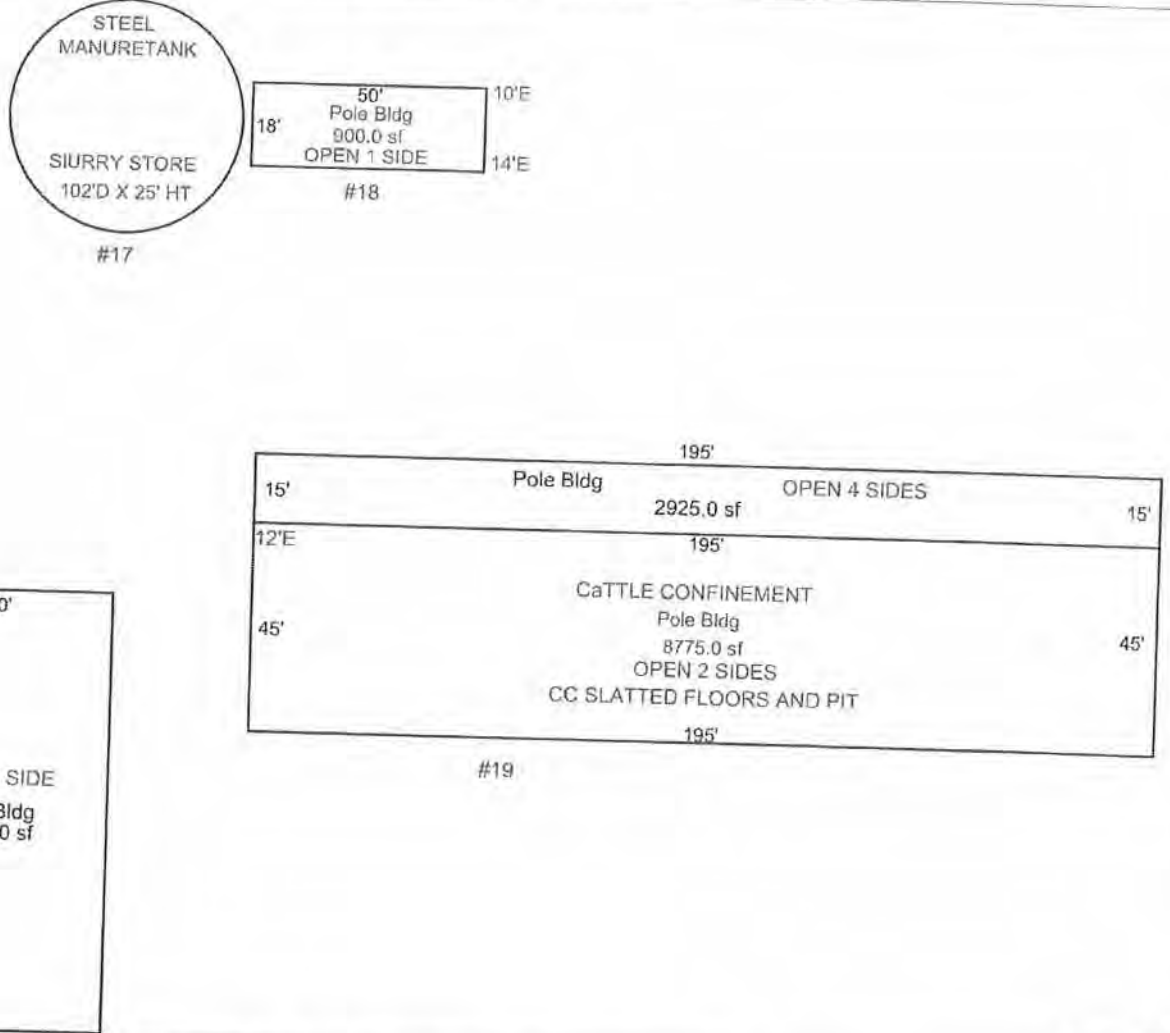
Parcel No 09-08-13-100-001

File No 2019090813100001 - 11

SUBJECT

Property Address _____
 City _____ County **FULTON COUNTY** State **IL** Zip _____
 Owner **DARE FARMS LLP**
 Client **Fulton** Client Address **Courthouse 100 North Main**
 Appraiser Name **JBlack** Inspection Date **04/02/2020**

IMPROVEMENTS SKETCH



AREA CALCULATIONS

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
POLEBLDG	Pole Bldg	1.00	900.00	136.0	
	Pole Bldg	1.00	8775.00	480.0	
	Pole Bldg	1.00	2925.00	420.0	
	Pole Bldg	1.00	4750.00	290.0	17350.00
MANURETANK	Manure Tank	1.00	1963.50	157.1	1963.50

Scale: 1" = 18'

Comment Table 1

Comment Table 2 Comment Table 3

SKETCH/AREA TABLE ADDENDUM

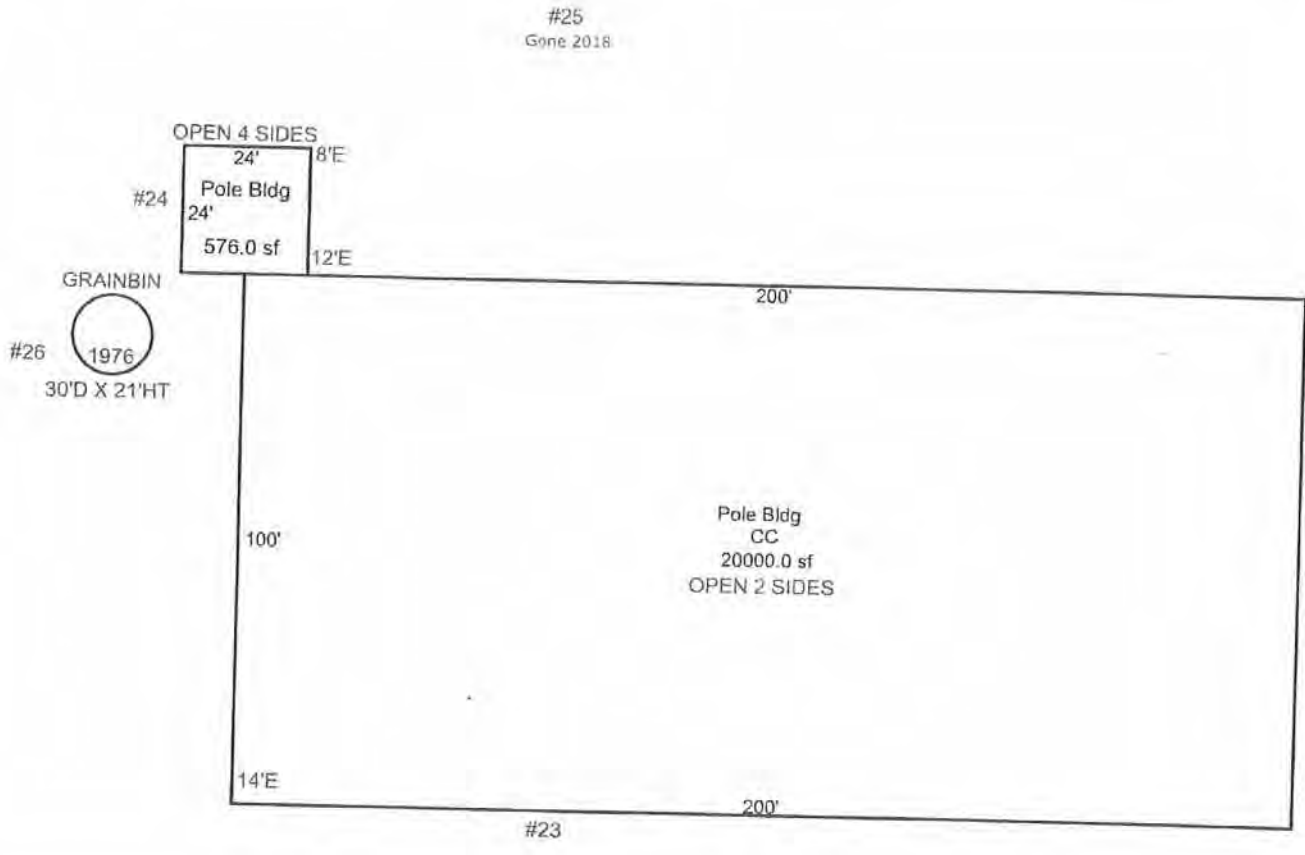
Parcel No 09-08-13-100-001

File No 2019090813100001 - 11

SUBJECT

Property Address _____
 City _____ County **FULTON COUNTY** State **IL** Zip _____
 Owner **DARE FARMS LLP**
 Client **Fulton** Client Address **Courthouse 100 North Main**
 Appraiser Name **JBlack** Inspection Date **04/02/2020**

IMPROVEMENTS SKETCH



Scale: 1" = 18'

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
PAVCONCR	CC	1.00	20000.00	600.0	20000.00
POLEBLDG	Pole Bldg	1.00	20000.00	600.0	
	Pole Bldg	1.00	576.00	96.0	20576.00
GRAINBIN	Grain Bin	1.00	176.71	47.1	176.71

Comment Table 1

Comment Table 2

Comment Table 3

AREA CALCULATIONS

SKETCH/AREA TABLE ADDENDUM

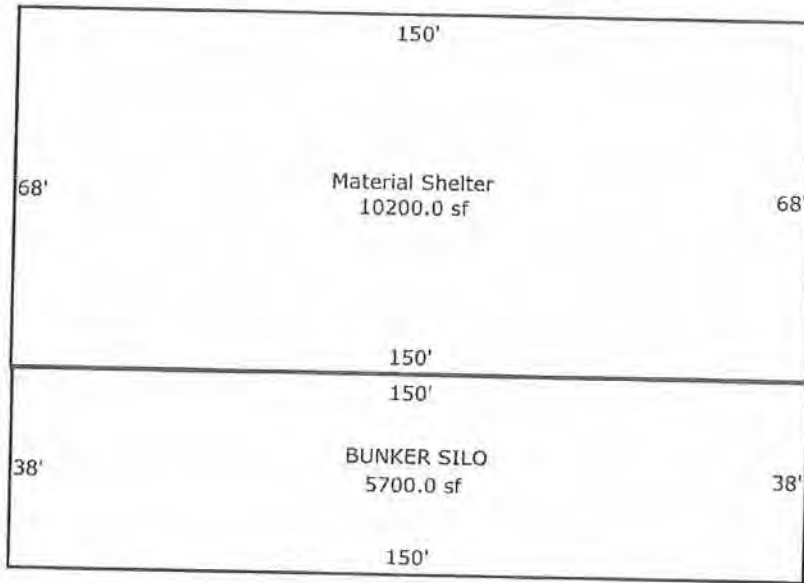
Parcel No 09-08-13-100-001

File No 2019090813100001 - 12

SUBJECT

Property Address			
City	County	FULTON COUNTY	State IL
Owner	DARE FARMS LLP	Zip	
Client	Fulton	Client Address	Courthouse 100 North Main
Appraiser Name	JBlack	Inspection Date	04/02/2020

IMPROVEMENTS SKETCH



AREA CALCULATIONS

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
MSC 473	Material Shelter	1.00	10200.00	436.0	10200.00
UND	Undefined	1.00	5700.00	376.0	5700.00

Scale: 1" = 18'

Comment Table 1

140690
 Value commercial assessed 461896

Comment Table 2

Comment Table 3

SKETCH/AREA TABLE ADDENDUM

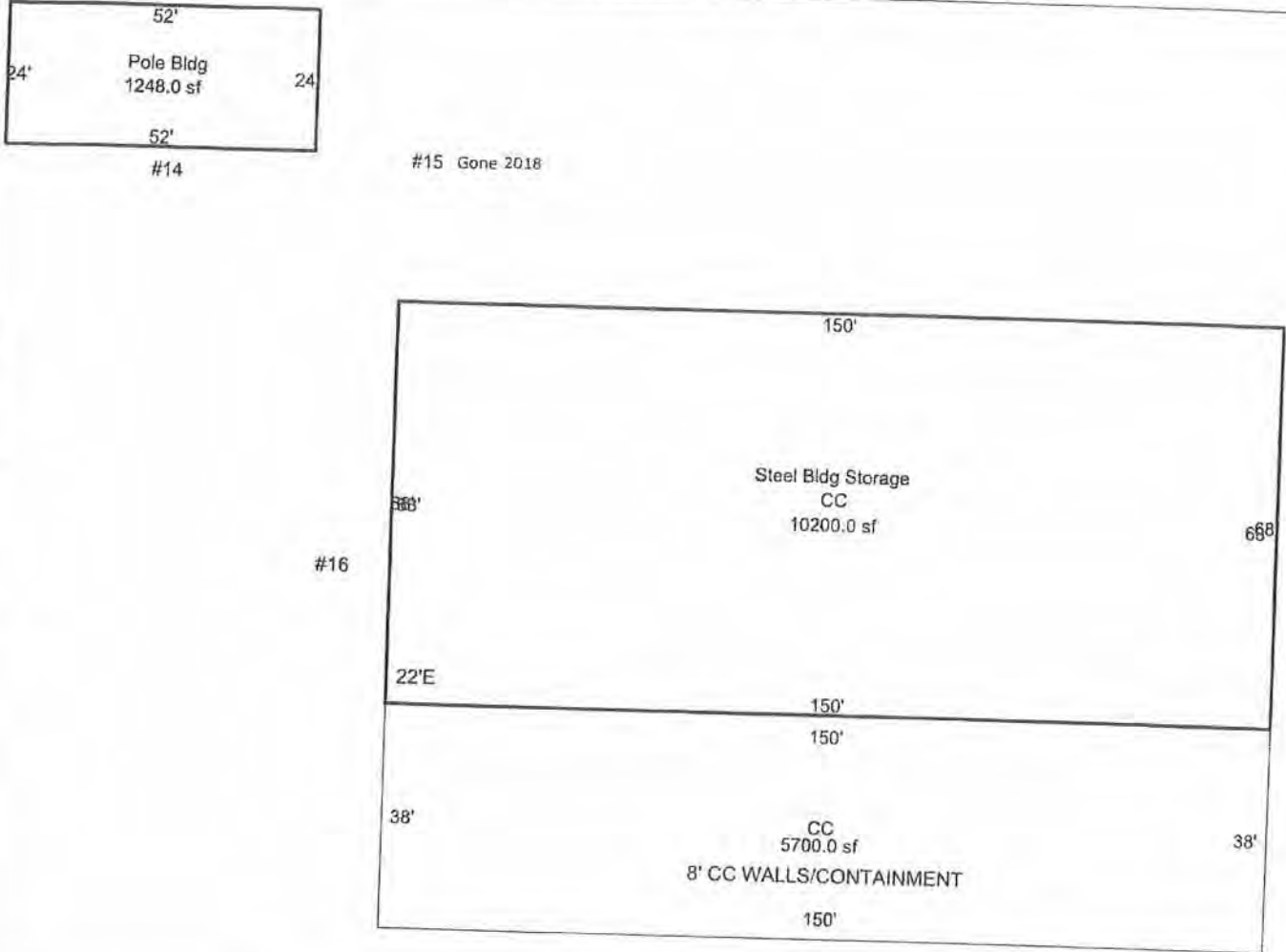
Parcel No 09-08-13-100-001

File No 2019090813100001 - 11

SUBJECT

Property Address _____
 City _____ County **FULTON COUNTY** State **IL** Zip _____
 Owner **DARE FARMS LLP**
 Client **Fulton** Client Address **Courthouse 100 North Main**
 Appraiser Name **JBlack** Inspection Date **04/02/2020**

IMPROVEMENTS SKETCH



Scale: 1" = 18'

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
PAVCONCR	CC	1.00	10200.00	436.0	
CC		1.00	5700.00	376.0	15900.00
POLEBLDG	Pole Bldg	1.00	1248.00	152.0	1248.00
STBLDGGR	Steel Bldg Storage	1.00	10200.00	436.0	10200.00

Comment Table 1	
Comment Table 2	Comment Table 3

AREA CALCULATIONS

COPY

IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT

FULTON COUNTY, ILLINOIS

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

Plaintiff,
v.

PHIL DARE, d/b/a DARE FARMS

Defendants

FILED

APR 07 2011

No. 10 CH 48

CLERK OF THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT
FULTON COUNTY, ILLINOIS

CONSENT ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Defendant, PHIL DARE, d/b/a DARE FARMS, 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.* (2010), and the Illinois Pollution Control Board ("Board") Regulations, 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 to the Consent Order

1. On May 3, 2010, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, pursuant to Section 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2010), against the Defendant.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2010).

3. At all times relevant to the Complaint, Defendant Phil Dare, d/b/a Dare Farms ("Dare Farms"), was and is in the business of cattle production with his father, Henry Dare. Dare Farms is a feeder cattle operation located in the NW 1/4 Section 13, T7N, R4E, Canton Township, in Fulton County, Illinois ("facility").

B. Allegations of Non-Compliance

Plaintiff and the Illinois EPA contend that the Defendant has violated the following provisions of the Act and Board Regulations:

Count I:

1. By causing or allowing strong, persistent and unreasonably offensive livestock odors to emanate from their site and to interfere with the use and enjoyment of the neighbors' property, the Defendant has caused air pollution and an odor nuisance, thereby violating Section 9(a) of the Act, 415 ILCS 5/9(a).

2. By failing to take into consideration and incorporate adequate odor control methods and technology at their livestock management facility and livestock waste-handling facility, thereby causing air pollution, the Defendant has violated Section 9(a) of the Act, 415 ILCS 5/9(a), and 35 Ill. Adm. Code 501.402(c)(3).

Count II:

3. By causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois or to violate the Board's regulations or standards, the Defendant has violated Section 12(a) of the Act, 415 ILCS 5/12(a).

4. By depositing contaminants upon the land in such a place and manner as to create a water pollution hazard, the Defendant has violated Section 12(d) of the Act, 415 ILCS 5/12(d).

5. By causing or allowing the discharge of a contaminant into waters of the State from a point source without an NPDES permit, the Defendant has violated Section 12(f) of the

Act, 415 ILCS 5/12(f), and 35 Ill. Adm. Code 309.102(a).

6. By failing to provide appropriate and adequate waste storage and maintain waste levels so as to prevent a discharge, the Defendant has violated Section 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d), 35 Ill. Adm. Code 501.404(c)(3) and 35 Ill. Adm. Code 501.404(c)(4)(A).

7. By failing to report the release of livestock waste at the time of the sump overflow and the lagoon overflow, the Defendant has violated Section 12(a) of the Act, 415 ILCS 5/12(a), and 35 Ill. Adm. Code 580.105(a).

C. Non-Admission of Violations

The Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, the Defendant does not affirmatively admit the allegations of violation within the Complaint and referenced above, and this Consent Order shall not be interpreted as including such admission.

D. Compliance Activities to Date

On July 22, 2010, an interim agreed order was entered in this matter. The Defendant operated the facility in compliance with the order during pendency of the 6-month-term of the order.

II. APPLICABILITY

This Consent Order shall apply to and be binding upon the Plaintiff, the Illinois EPA and the Defendant, and any officer, director, agent, or employee of the Defendant, as well as any successors or assigns of the Defendant. The Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. This Consent Order may be used against the Defendant in any subsequent enforcement action or permit proceeding as proof of a past

adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2010).

III. JUDGMENT ORDER

This Court has jurisdiction of the subject matter herein and of the parties to this Consent Order consenting hereto 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. Penalty

The Defendant shall pay a civil penalty of Nine Thousand Dollars (\$ 9,000.00) collectively with his father Henry Dare, pursuant to the terms and conditions of a Consent Order being filed contemporaneously in the matter of *People v. Henry Dare*, Fulton County Case No. 98-CH-30.

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

B. Stipulated Penalties, Interest and Default

1. If the Defendant fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Consent Order, the Defendant shall provide notice to the Plaintiff and the Illinois EPA of each failure to comply with this Consent Order and shall pay stipulated penalties in the amount of \$25.00 per day until such time that compliance is achieved. The Plaintiff may make a demand for stipulated penalties upon the Defendant for its noncompliance with this Consent Order. However, failure by the Plaintiff to make this demand shall not relieve the Defendant of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Defendant knows or should have known of its noncompliance with any provision of this Consent Order.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Defendant not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

C. Payment Procedures

All payments required by this Consent Order shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The name, case number and the Defendant's federal tax identification 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:

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

D. Future Compliance

1. The Defendant shall cease and desist from all discharges of livestock manure, livestock waste, waste feed, silage leachate, and/or wastewater from the facility.

2. The Defendant shall cease and desist from causing or allowing offensive odor emissions from the facility.

3. The Defendant shall:

A. Install and maintain at all times an appropriate cover, approved by the Illinois EPA, on the above ground manure storage tank so as to prevent offensive odor emissions.

- A. Manure application to cropland shall be performed in a manner so as not to cause or create offensive odor conditions.
- B. All liquid cattle manure that is land applied shall be injected beneath the soil surface at the time of land application.
- C. All solid cattle manure that is land applied shall be incorporated into the soil surface within eight (8) hours of land application. Application of solid manure on frozen ground is not advised. If performed, it should be accomplished in a manner that does not create offensive odors or result in contaminated runoff.
- D. The Defendant shall submit manure application records to the Illinois EPA semi-annually.

8. The Defendant shall design, install and maintain an approved Vegetative Environmental Buffer ("VEB") on the west and south sides of the cattle facility. The design of the VEB or shelter belt shall be submitted to the Illinois EPA by April 1, 2011 for approval. The approved shelterbelt shall be installed by June 1, 2011.

9. For purposes of Section III.D. 4, 5 and 7, notifications and/or filings to the Illinois EPA shall be made to:

Eric Ackerman
Illinois Environmental Protection Agency
Peoria Regional Office
5415 North University
Peoria, Illinois 61614
Telephone: (309) 693-5463
Fax: (309) 693-5467

10. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Defendant's facility which is the subject of this Consent Order, at all reasonable times for the purposes of conducting inspections and evaluating compliance

status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

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

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

E. *Force Majeure*

1. *Force majeure* is an event arising solely beyond the control of the Defendant, 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, other natural disasters, and labor disputes beyond the reasonable control of the Defendant. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse the Defendant for a failure to comply with such a requirement.

2. When a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, the Defendant shall orally notify the Plaintiff and the Illinois EPA within forty-eight (48) hours of the occurrence. Written notice shall be given to the Plaintiff and the Illinois EPA as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence. This section shall be of no effect as to the particular event involved if the Defendant fails 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 Defendant's claim of a delay or impediment to performance. If the Plaintiff and the Illinois EPA agree that the delay or impediment to performance has been or will be caused by circumstances beyond the control of the Defendant and that the Defendant could not have prevented the delay by the exercise of due diligence, the

parties to this Consent Order 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 Defendant shall not be liable for stipulated penalties for the period of any such stipulated extension.

4. If the Plaintiff and the Illinois EPA do not accept the Defendant's claim of a *force majeure* event, the Defendant must file a petition with the Court within twenty (20) calendar days of receipt of the Plaintiff's and the Illinois EPA'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 Defendant. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of the Defendant and that the Defendant could not have prevented the delay by the exercise of due diligence, the Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

G. 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 Plaintiff or Defendant for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. The Defendant agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

2. The parties to this 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 designated representatives. 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 to this Consent Order, for filing and incorporation by reference into this Consent Order.

F. Dispute Resolution

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

2. The dispute resolution procedure must be invoked by a party to this Consent Order through a written notice describing the nature of the dispute and the party's position with regard to such dispute. The other parties to this Consent Order 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 this 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 to this Consent Order are unable to reach agreement during the informal negotiation period, the Plaintiff and the Illinois EPA shall provide the Defendant with a written summary of its position regarding the dispute. The position advanced by the Plaintiff and the Illinois EPA shall be considered binding unless, within twenty (20) calendar days of the Defendant's receipt of the written summary of the Plaintiff's and the Illinois EPA's position, the Defendant files a petition with this Court seeking judicial resolution of the dispute. The Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument responsive to the petition within twenty (20) calendar days of service of Defendant's petition. The administrative record of the dispute shall include the written notice of the dispute, any responsive submittals, the Plaintiff's and the Illinois EPA's written summary of their position, the Defendant's petition before the Court and the Plaintiff's and the Illinois EPA's response to the petition. The Plaintiff's and the Illinois EPA's position shall be affirmed unless, based upon the administrative record, it is against the manifest weight of the evidence.

G. Release from Liability

In consideration of the Defendant's payment of a \$ 9,000.00 penalty, its commitment to Cease and Desist as contained in Section III.D. above, and completion of all activities required hereunder, the Plaintiff releases, waives and discharges the Defendant from any further liability or penalties for the violations of the Act and Board Regulations 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 May 3, 2010. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against the Defendant with respect to all other matters, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations;

- c. liability for natural resources damage arising out of the alleged violations; and
- d. the Defendant's 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 or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), other than the Defendant.

H. Execution and Entry of Consent Order

This Order shall become effective only when executed by all parties to this Consent Order and the Court. This Order may be executed by the parties to this Consent Order in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party to this Consent Order 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 to this Consent Order, 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. LISA MADIGAN,
Attorney General of the
State of Illinois


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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau

DATE: 3/23/11

FOR THE DEFENDANT:

PHIL DARE

BY: 

DATE: 3/25/11

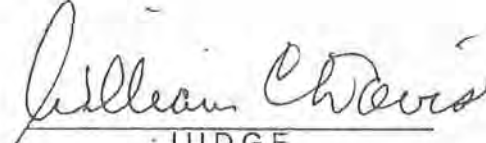
ENTERED:

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA BONNETT, Interim Director
Illinois Environmental Protection Agency

BY: 
JOHN J. KIM
Chief Legal Counsel

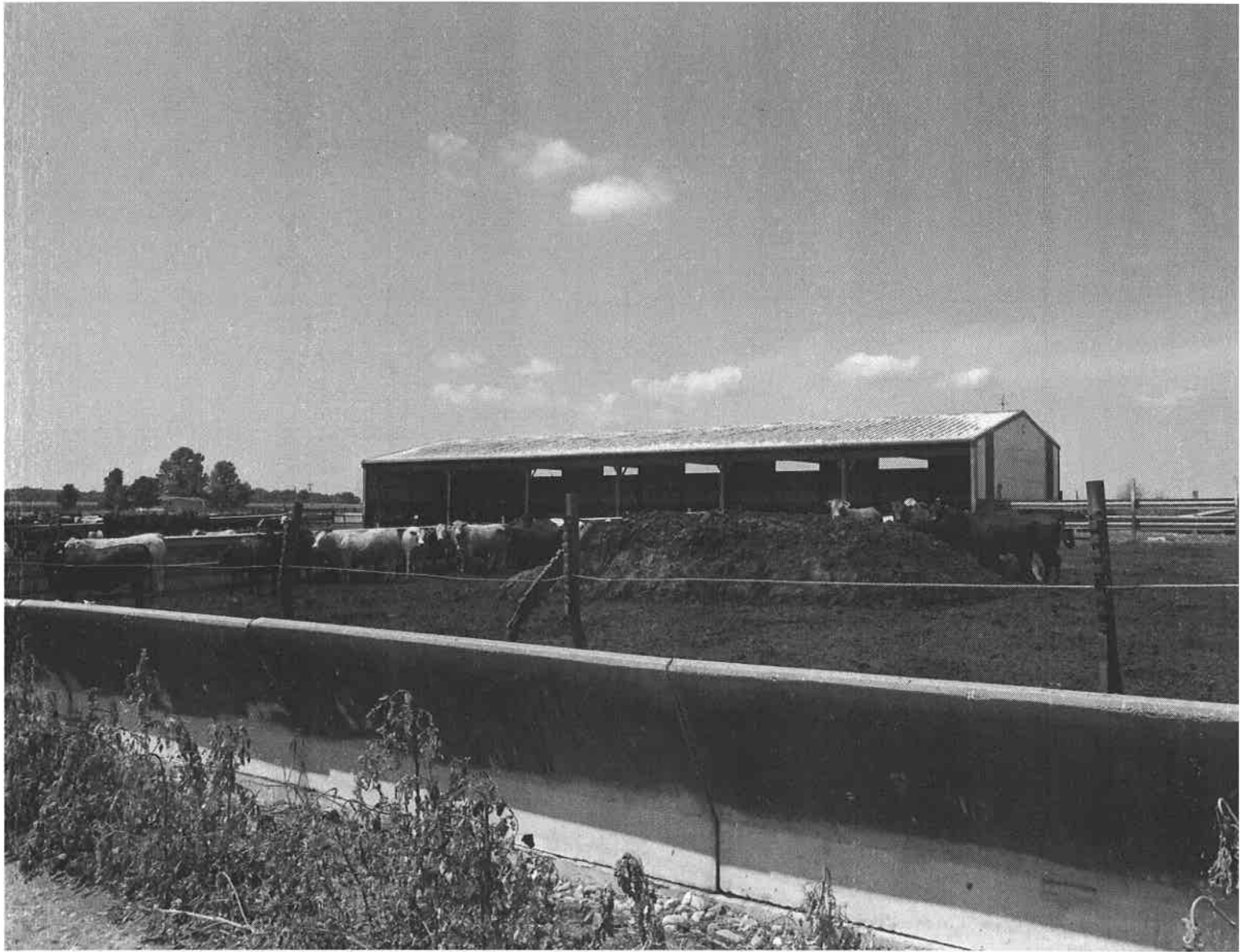
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JUDGE

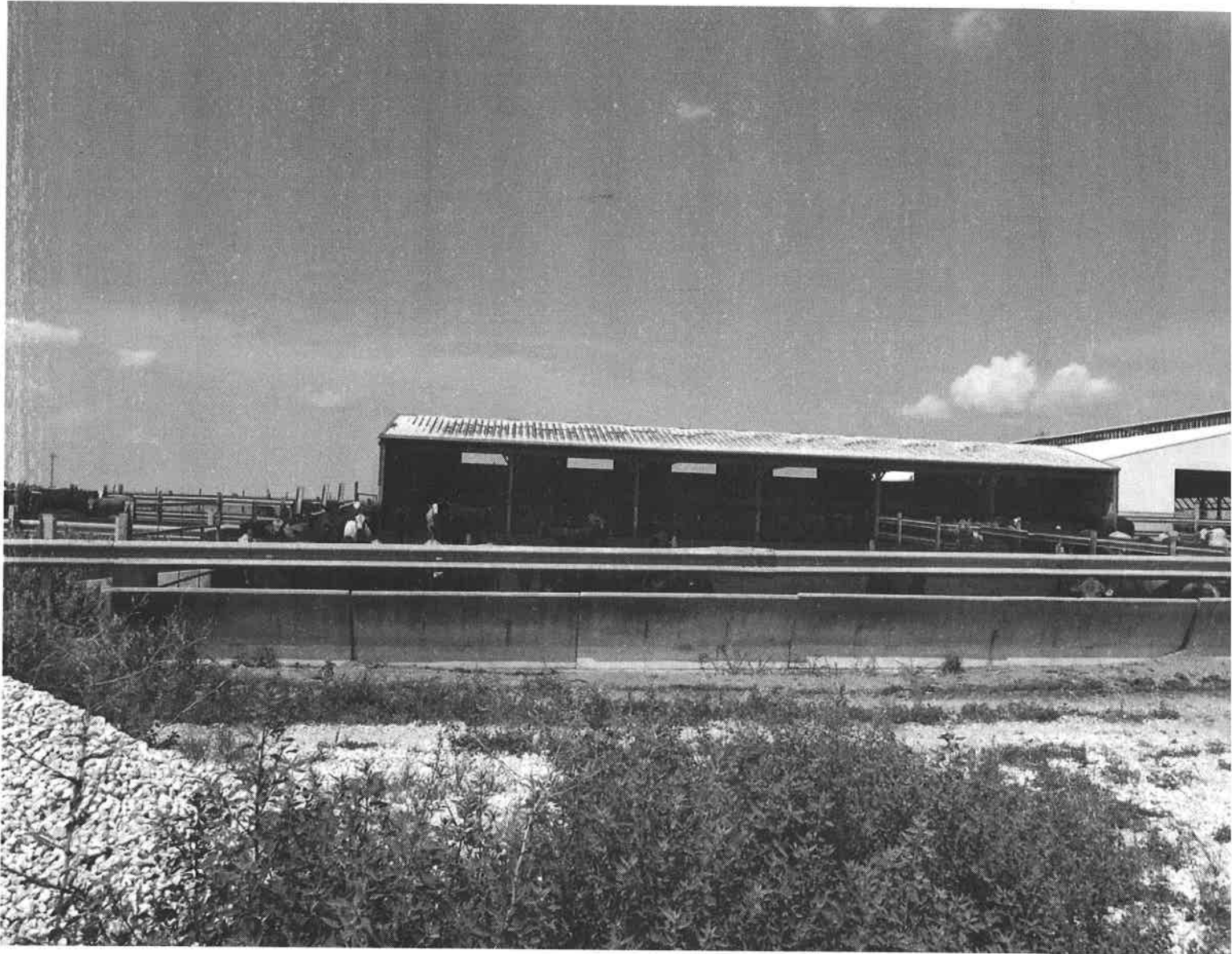
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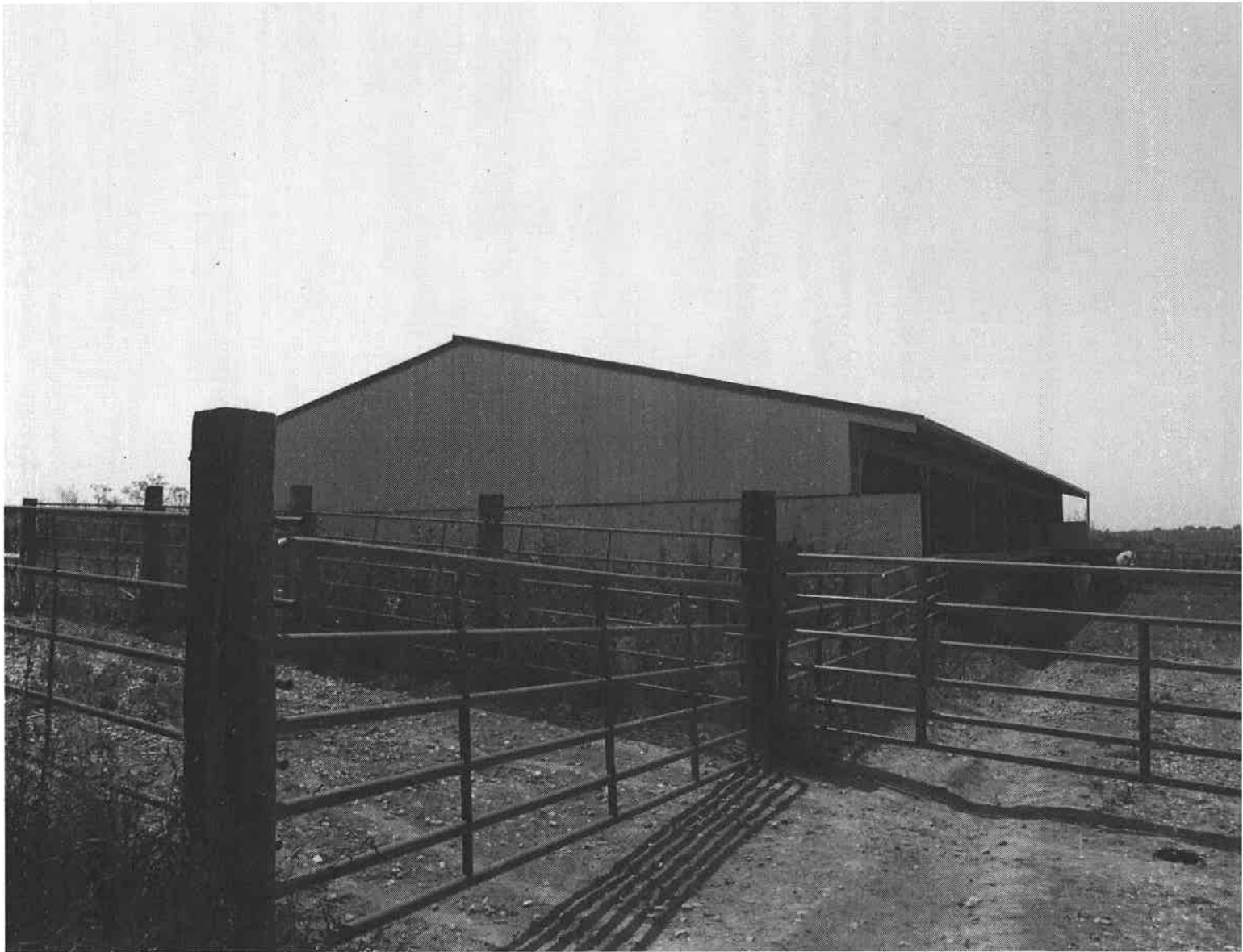




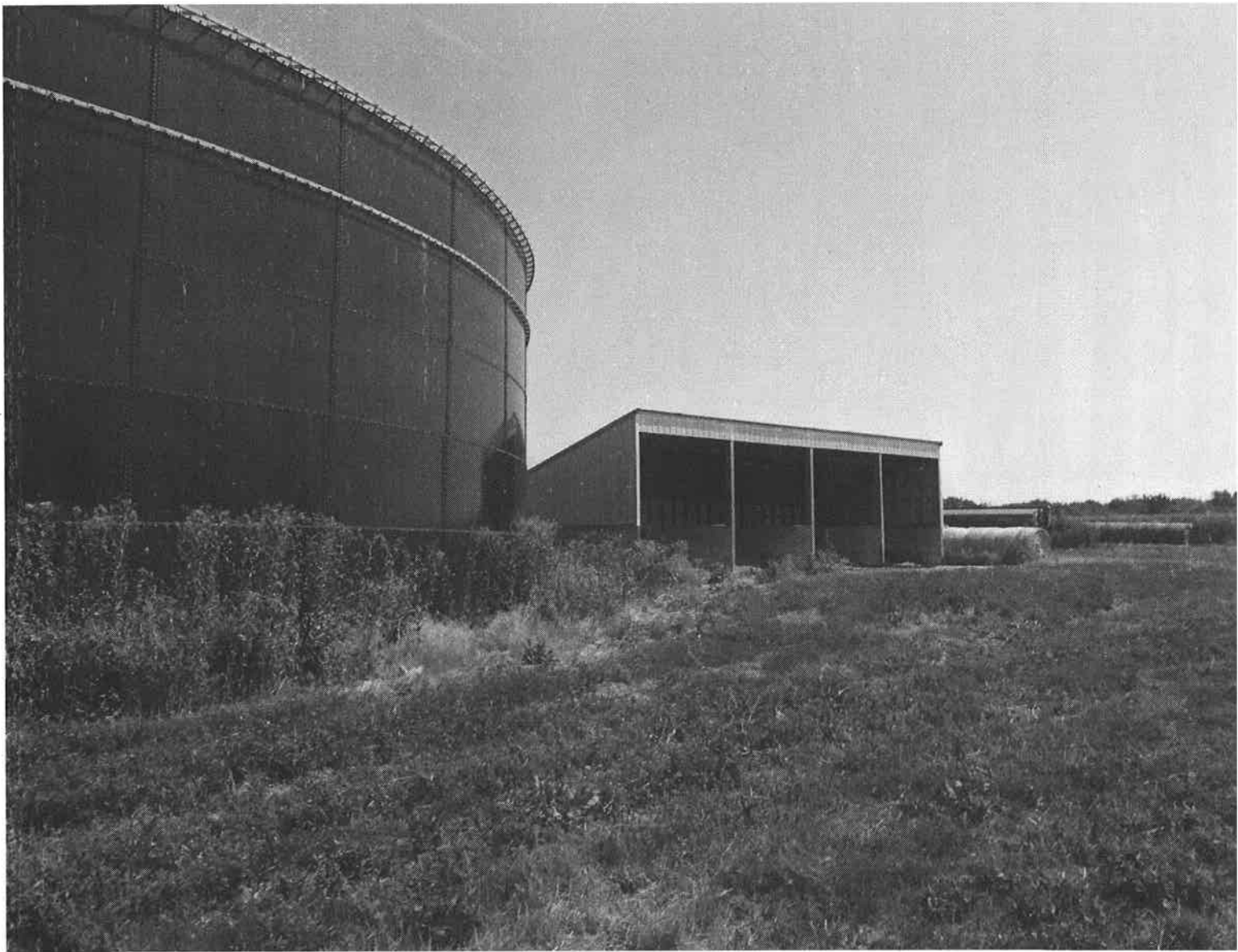






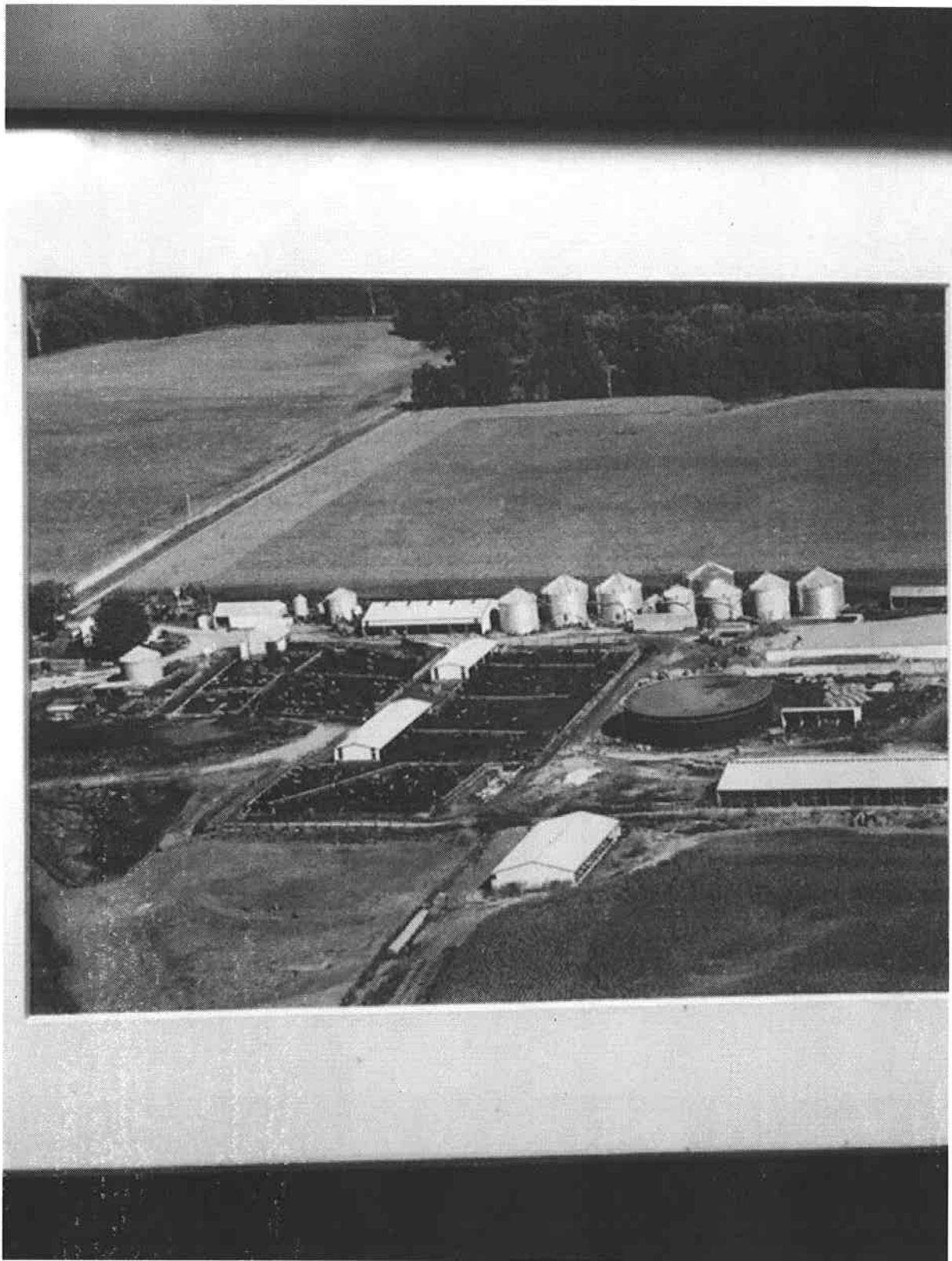




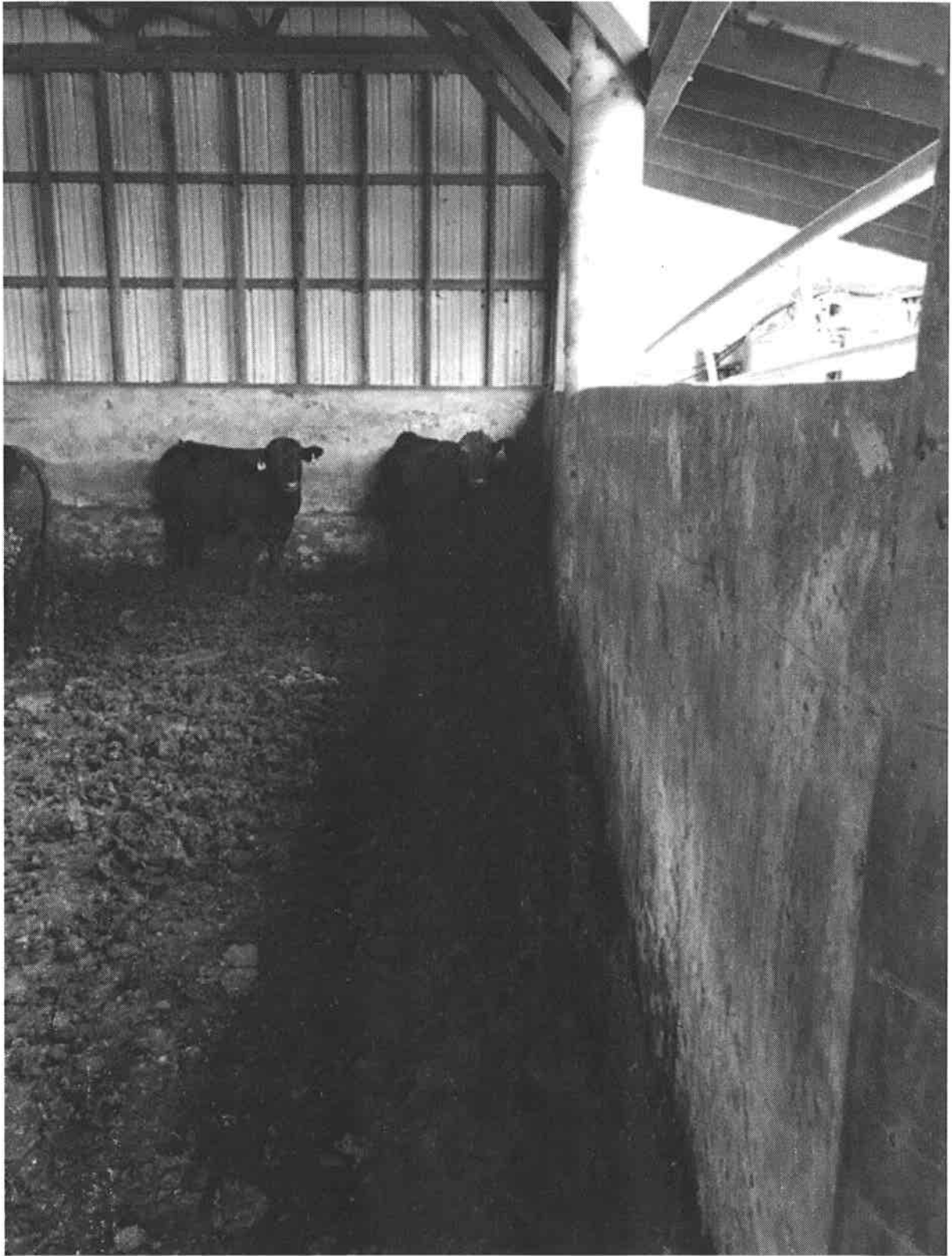


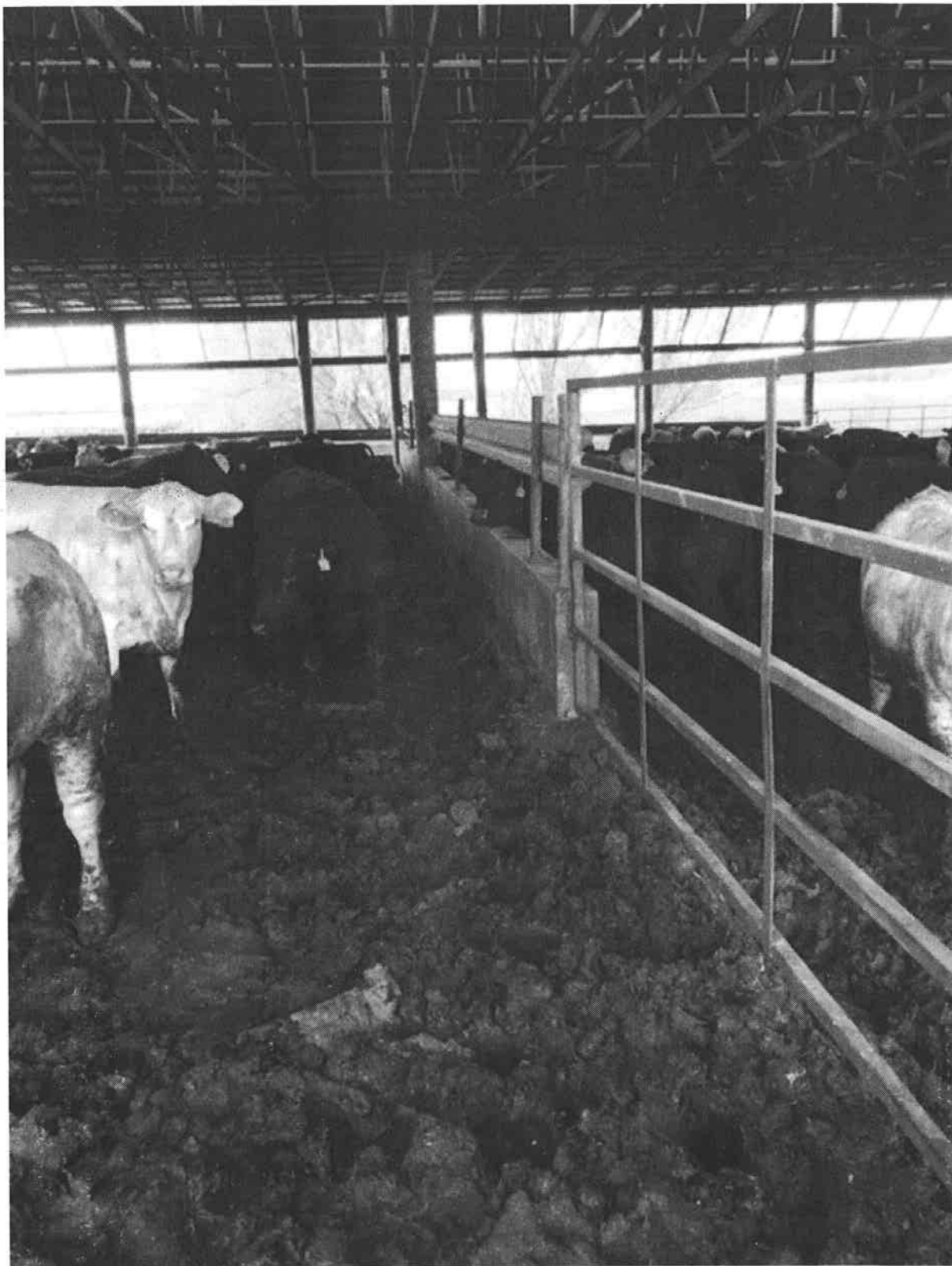












DARE FARMS

SUPPLEMENTAL
DOCUMENTATION

NOVEMBER 6, 2020

Roubitchek, Mike

From: Ron Weber <RWeber@fwslawyers.com>
Sent: Friday, November 6, 2020 2:56 PM
To: Roubitchek, Mike
Cc: Ron Weber
Subject: [External] Re: Dare Farms
Attachments: Photo 80 x 150.jpg; Photo 80 x 150 (2).jpg; Photo 80 x 150 (3).jpg; 100 x 200 Schematic.pdf; Ariel 100 x 200.pdf; Photo 100 x 200.pdf; Photo 100 x 200 (2).jpg; Photo 100 x 200 (3).jpg; DARE FARMS EPA 11.6.20.pdf

Mike,

Thank you for your patience. Please see attached narrative and photos.

Ronald Weber
Froehling, Weber & Schell, LLP
167 West Elm Street
Canton, Illinois 61520
Phone: (309) 647-6317
Fax: (309) 647-6350

rweber@fwslawyers.com

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DARE FARMS, LLP (Property Identification Number 09-08-13-100-001)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

PCB 20-041 (Tax Certification)

Dare cattle operation, which is the subject of this Petition is located approximately a mile Northeast of Canton.

For many years during 1990 and early 2000 there were numerous complaints about the odor from the Dare's cattle operation. Additionally, there were complaints about runoff from an open lagoon system that existed for many years and additionally there was runoff from silage and other feed materials that was stored in substantially open areas.

During most of this time the Dares had operated with open pins, with little, if any, cover.

Despite Dare's attempts at resolving these issues, there was a formal complaint filed in 2010 by the People of the State of Illinois, Environmental Protection Agency against Dare Farms, LLP, being Fulton Co. Case No. 10-CH-48.

After conference and attempted remediating, the case was resolved by Consent Order in April of 2011.

The complaint had two counts, one for odor and the second for discharge of contaminating and depositing contaminants.

In attempts to resolve the issues, both before and after the complaint, the Dares took several actions.

They installed a 101 diameter, 1,400,000-gallon, manure storage tank and substantially discontinued the use of the lagoon.

They installed a 62 x 196 deep pit slatted floor under a building for housing cattle to prevent direct runoff of manure and rainwater.

These have been accepted as qualifying for tax exempt treatment as well as other fixtures.

The two issues appearing to remain are:

1. 80 x 150 covered feed storage building.

The complaint filed by the EPA in Count II was with regard to causing, allowing or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois; and

The Consent Order was to cease and desist from all discharges of livestock manure, livestock waste, waste feed, silage leachate, and/or wastewater from the facility.

In reference to the covered feed area, in 2011 the Illinois EPA stated the need to immediately begin to cover the food supply. First attempts were made by using tarps and tire sidewalls in a failed attempt to comply. After further failed efforts and continued water pollution Dares built an 80 x 150-foot roof that now covers the feed storage area. The roof was constructed exclusively to prevent water pollution from the rain leaching through ethanol by-products and corn silage that are stored and contained in this building. If feed is not covered and stored on concrete, rainwater leaches through the feed and runs out of it, then runs into nearby surface waters on the farm. In 2019 this building diverted 366,000 gallons of rainwater from leaching through the products stored under the roof and rainwater remained clean from being contaminated and running off the farm.

2. The issue in the roof structure of the 100 x 200 solid bedding pack building.

The complaint filed by the EPA in Count II was with regard to causing or allowing the discharge of a contaminant into waters of the State from a point source without NPDES permit.

In reference to the 100 x 200 building, prior to its construction, the area where the building is located consisted of approximately 150 x 250 feet of open concrete cattle yards. These pens drained in to an earthen lagoon that was in every way too small. It was full all the time. Additionally, the lagoon was a huge contributor to the odor issues. Before this building was constructed Dares were able to feed approximately 500 cattle in the area. When the building was constructed Dares had fully intended to continue to house 500 cattle in this new structure, but have only been able to house around 300. One of the contributing factors to the reduced capacity is parts of the building are periodically used to store manure when land application isn't an option. All of the pens consist of concrete dividers that help serve as flexible manure storage. As much as 600 tons of manure has been stored in the building awaiting proper field application.

The roof and drainage system associated with the 100 x 200 building diverts the rainwater from falling into the manure. Without the roof, the water would then be required to be diverted to the storage tank, which would not have the capacity to accept all of the rainwater from the cattle pens as well as runoff from the cattle buildings.

The additional cost of operating with cattle buildings versus open pens has previously been discussed and has indicated that the building increases the cost of the operation rather than providing a significant benefit.

We believe that these two buildings were constructed for primarily and substantially the reduction of odor from rainwater falling upon the manure and creating significant odor problems, and additionally has substantially reduced problems of contaminated runoff from the manure and from the feed stored under shelter.

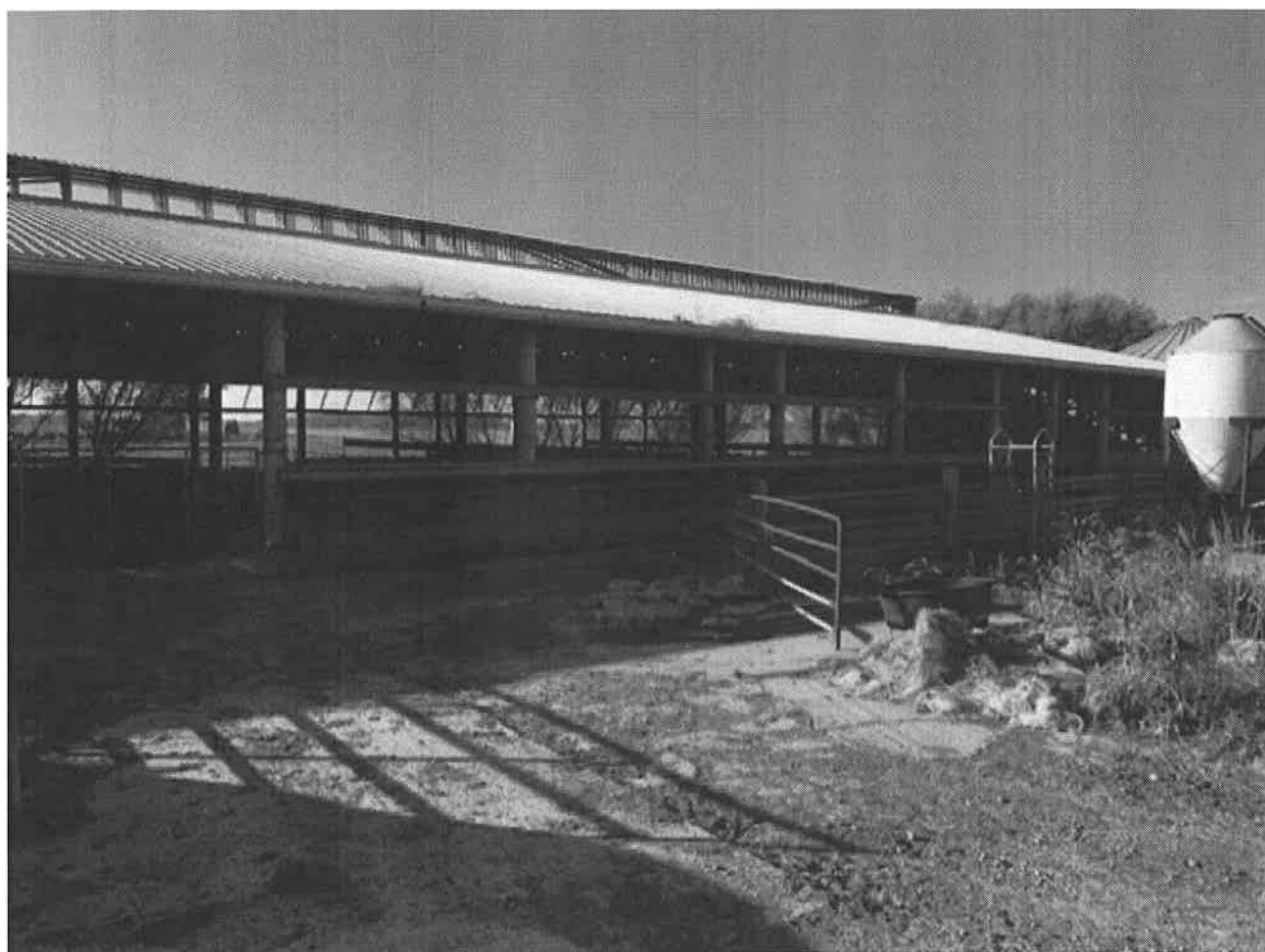
While there may be some side benefits to these buildings, their purpose was to reduce the Dare's ongoing issues with their neighbors and the EPA with regard to unacceptable odors and discharge of contaminants.













SKETCH/AREA TABLE ADDENDUM

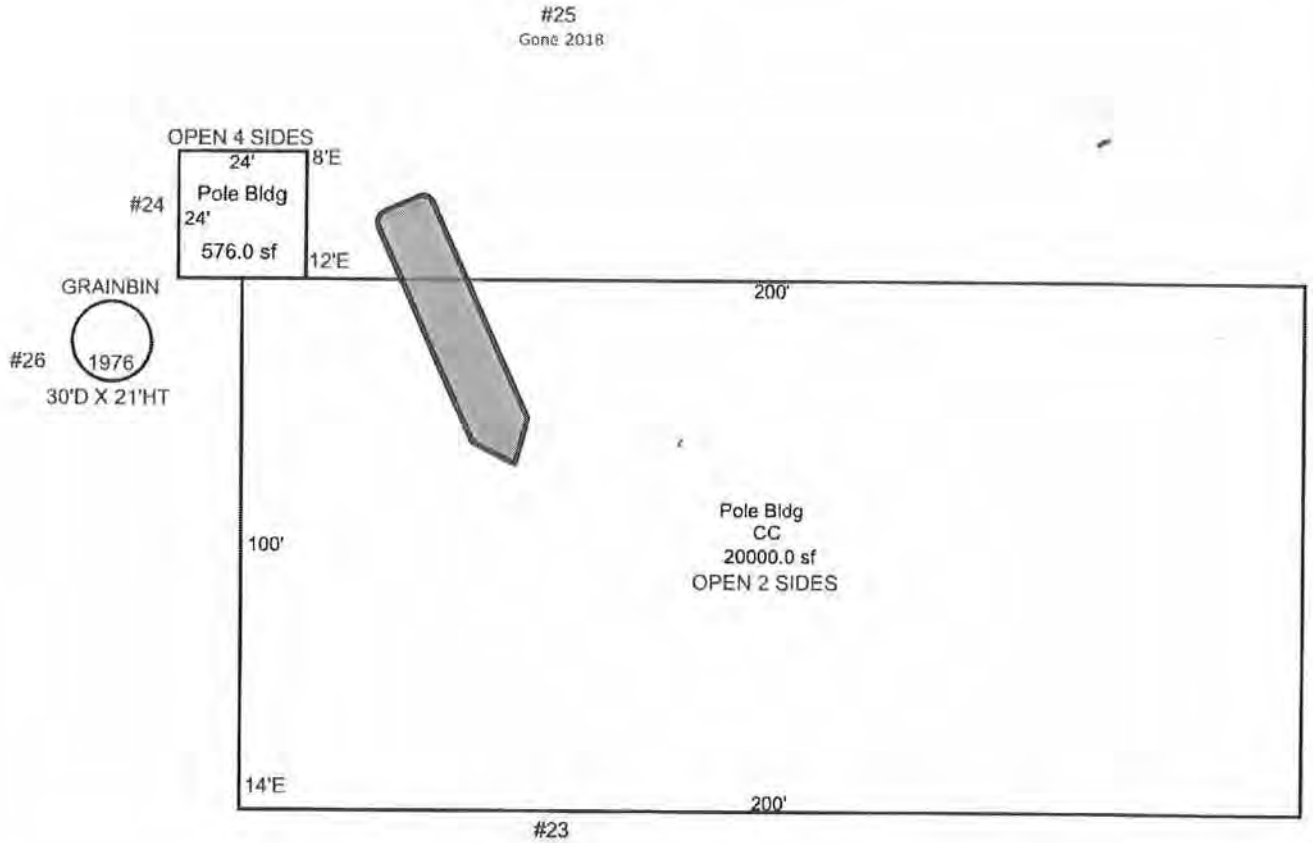
Parcel No **09-08-13-100-001**

File No **2019090813100001 - 11**

SUBJECT

Property Address			
City	County FULTON COUNTY	State IL	Zip
Owner DARE FARMS LLP			
Client Fulton	Client Address Courthouse 100 North Main		
Appraiser Name JBlack	Inspection Date 04/02/2020		

IMPROVEMENTS SKETCH



Scale: 1" = 18'

AREA CALCULATIONS

AREA CALCULATIONS SUMMARY

Code	Description	Factor	Net Size	Perimeter	Net Totals
PAVCONCR	CC	1.00	20000.00	600.0	20000.00
POLEBLDG	Pole Bldg	1.00	20000.00	600.0	
	Pole Bldg	1.00	576.00	96.0	20576.00
GRAINBIN	Grain Bin	1.00	176.71	47.1	176.71

Comment Table 1	
Comment Table 2	Comment Table 3

