

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

September 25, 2015

Clerk of the Court
Genesee County Circuit Court
900 S. Saginaw Street #204
Flint, MI 48502

Re: *MDEQ v Chad Linders and Jessica L. Linders*
Genesee County Circuit Court No. 14-102172-CE

Dear Clerk:

Enclosed for filing is a Proof of Service showing service of a true copy of the Consent Judgment signed by Judge Yuille on September 22, 2015 upon counsel of record.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian J. Negele".

Brian J. Negele (P41846)
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
6th Floor, Williams Building
525 West Ottawa Street
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540
negeleb@michigan.gov

BJN/wjc

Enclosures

cc: Karen Boase, MDEQ Water Bureau
Paul F. Bohn

LF:\Linders, Chad & Jessica, DEQ v CC\Letter - Clerk - 2015-09-25

STATE OF MICHIGAN
CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
GENESEE COUNTY

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

No. 14-102172 -CE

v

HON. RICHARD B. YUILLE

CHAD LINDERS and JESSICA L. LINDERS,

Defendants.

Brian J. Negele (P41846)
Attorney for Plaintiff
Michigan Department of Attorney General
Environment, Natural Resources and
Agriculture Division
P.O. Box 30755
Lansing, MI 48909
517-373-7540
negeleb@michigan.gov

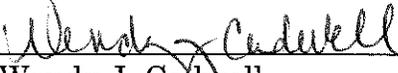
Paul F. Bohn (P41863)
Fausone Bohn, LLP
Attorney for Defendants
41700 West Six Mile Rd., Ste. 101
Northville, MI 48168-3460
(248) 380-0000
pbohn@fb-firm.com

PROOF OF SERVICE

On September 25, 2015, I sent by first class mail a true copy of the Consent Judgment signed by Judge Yuille on September 22, 2015 to:

**Paul F. Bohn, Fausone Bohn, LLP, 41700 West Six Mile Road,
Suite 101, Northville, MI 48168-3460.**

I declare that the statements above are true to the best of my information, knowledge, and belief.



Wendy J. Cadwell
Legal Secretary

STATE OF MICHIGAN
CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
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MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

No. 14-102172-CE

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HON. RICHARD B. YUILLE

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CONSENT JUDGMENT

In the 7th Judicial Circuit Court
In the State of Michigan, on the
_____ day of _____ 2015.

Present: Honorable Richard B. Yuille, Circuit Court Judge

Plaintiff Michigan Department of Environmental Quality (MDEQ) and
Defendants Chad Linders and Jessica L. Linders agree that settlement of this
action is in the public interest and consent to the entry of this Judgment, without

further litigation, as the most appropriate means of resolving the allegations raised by Plaintiff in the Complaint filed with the Court on March 5, 2014. As evidenced by the signatures below, the Parties agree to, and shall be bound by, the terms and findings of this Judgment.

The entry of this Judgment by Defendants is neither an admission or a denial of liability with respect to any issue dealt with in this Judgment, nor an admission or denial of any factual allegations or legal conclusions stated or implied herein.

This Judgment requires the completion of specified activities by Defendants pursuant to Part 31, Water Resources Protection, MCL 324.3101 *et seq.*; Part 91, Soil Erosion and Sedimentation Control, MCL 324.9101 *et seq.*; Part 301, Inland Lakes and Streams, MCL 324.30101 *et seq.*; Part 303, Wetlands Protection, MCL 324.30301 *et seq.*, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA); and the administrative rules promulgated thereunder, upon certain property located at 4198 McCormick Drive, Linden, Genesee County, Michigan that is the subject of the Complaint.

NOW, THEREFORE, before taking any testimony, without trial of any issue of fact or law, and upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED and DECREED:

I. JURISDICTION AND VENUE

A. This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.3115(1), MCL 324.9113(1), MCL 324.30112, MCL 324.30316, and Section 605 of the Revised Judicature Act (RJA), MCL 600.605. This Court also

has personal jurisdiction over Defendants. Defendants waive all objections and defenses that they may have with respect to the jurisdiction of the Court.

B. Venue is proper in this circuit pursuant to MCL 324.3115(1), MCL 324.9113(1), MCL 324.30112, and MCL 324.30316.

C. The Court determines that the terms and conditions of this Judgment are reasonable, adequately resolve the environmental issues raised in the Complaint, and properly protect the interests of the people of the State of Michigan.

D. The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Judgment and to resolve disputes arising under the same, including those that may be necessary for its construction, execution, or implementation.

II. PARTIES BOUND

A. Plaintiff MDEQ is a principal department within the Executive Branch of the State of Michigan. MDEQ is the state agency mandated to provide for the protection of the natural resources of the state from pollution, impairment, and destruction. MCL 324.501 and Executive Order 2011-1.

B. Defendants Chad Linders and Jessica L. Linders are the owners of the property at 4198 McCormick Drive, Linden, Genesee County, Michigan, and at all times relevant to this cause of action, are or were title holder to such property. The allegations in the Complaint pertain to this property as designated in the Complaint and herein referred to as the "Property." Lake Ponemah abuts the Property and wetlands are present on the Property.

C. The provisions of this Judgment shall be binding on the Parties, their agents, successors, and assigns. No change or changes in the ownership or other legal status of Defendants, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter Defendants' responsibilities under this Judgment unless expressly agreed to by MDEQ as an amendment to this Judgment. Defendants shall provide MDEQ with written notice prior to the transfer of ownership of part or all of the Property and shall also provide a copy of this Judgment to any subsequent owners or successors prior to the transfer of any ownership rights.

D. Defendants shall provide a copy of this Judgment to all contractors, subcontractors, and consultants that are retained to conduct any portion of the compliance activities to be performed pursuant to this Judgment within three (3) calendar days of the effective date of such retention.

E. Notwithstanding the terms of any contract(s) that Defendants may enter into with respect to the compliance activities to be performed pursuant to this Judgment, Defendants are responsible for compliance with the terms of this Judgment and shall use their best efforts to ensure that their contractors, subcontractors, consultants, and employees perform all compliance activities in full conformance with the terms and conditions of this Judgment.

III. STATEMENT OF PURPOSE

A. In entering into this Judgment, it is the mutual intent of the Parties that Defendants will do the following:

1. Prevent direct and indirect discharges of substances that are or may become injurious into the waters of the state;
2. Maintain adequate soil erosion and sedimentation controls to ensure that discharges of sediment and/or sediment-laden storm water are not discharged into waters of the state during the performance of wetland restoration activities and seawall installation;
3. Conduct wetland restoration activities as described in this Judgment;
4. Comply with the terms of this Judgment;
5. Partially reimburse Plaintiff for costs of surveillance and enforcement; and
6. Pay a civil fine commensurate with the violations alleged in the Complaint and in the future pay stipulated fines as required by this Judgment for failures to meet its obligations.

IV. DEFINITIONS

- A. "Effective Date" means the date that the Court enters this Judgment.
- B. "Judgment" means this Consent Judgment and any attachment hereto, including any future modifications, any reports, plans, specifications, and schedules required by this Consent Judgment which, upon approval of MDEQ, shall be incorporated into and become an enforceable part of this Consent Judgment.

C. Water Resources Division or “WRD” means the Division of MDEQ and any successor entities charged with implementing Part 31, Part 91, Part 301, and Part 303 of the NREPA.

D. “Party” means the Plaintiff or Defendants. “Parties” means the Plaintiff and Defendants.

G. Unless otherwise defined herein, all terms used in this document, which are defined in pertinent parts of the NREPA and associated administrative rules and/or permits or the federal Clean Water Act, shall have the same meaning in this document as in those pertinent parts, rules, and/or permits.

V. COMPLIANCE WITH STATE AND FEDERAL LAWS

All actions required to be taken pursuant to this Judgment shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws, rules, and regulations including the procurement of all necessary permits and approvals.

VI. COMPLIANCE PROGRAM

A. Defendants shall comply with all relevant Part 31, Part 91, Part 301, and Part 303 requirements, including obtaining and maintaining all required permits and seeking permit modification as required under law.

B. Defendants shall not conduct any activity regulated by Part 303 within wetlands regulated under Part 303, except as provided by this Judgment, or as authorized by separate permit issued by the WRD. This Judgment does not obviate

the need to acquire additional state, local, or federal permits as may be required by law.

C. Defendants shall implement all wetland restoration activities detailed in the MDEQ-approved plan dated July 20, 2015, and which is attached as Exhibit A. All wetland restoration activities shall be completed in accordance with Exhibit A.

D. Defendants shall apply for and obtain a Part 91 permit from the Genesee County Enforcing Agency in the name of the title holder(s) of the Property prior to conducting the wetland restoration activities. Defendants shall provide written notice to MDEQ that permanent stabilization of the Property has occurred in accordance with the Part 91 permit and shall schedule a final site review with MDEQ to verify the site has been permanently stabilized prior to terminating the Part 91 permit. Once MDEQ agrees that the site is permanently stabilized, Defendants may seek termination of the Part 91 permit by the Genesee County Enforcing Agency.

E. Defendants wish to install a seawall on the Property during the mobilization for the wetland restoration activities. The WRD agrees to accept a permit application under Part 301 of the NREPA for approval to install a seawall. Defendants submitted the seawall permit application and applicable permit fee to the WRD on April 9, 2015 and the WRD has begun processing the seawall permit application in accordance with the requirements of Part 301, Part 303 and Part 13, Permits, of the NREPA, MCL 324.1301 *et seq.* The seawall permit application shall

be deemed administratively complete under Parts 13 and 301 upon resolution of the violations alleged in the Compliant through entry of this Judgment.

F. Defendants shall complete the wetland restoration activities and the installation of permanent soil erosion and sedimentation control measures around the restoration location not later than May 1, 2016. Upon completion of the wetland restoration activities, Defendants shall provide to the WRD, at the address provided in Section XI Notices of this Judgment, written notification of completion of the wetland restoration activities.

G. Defendants shall notify MDEQ at least five (5) days prior to the start of wetland restoration activities.

H. Defendants shall be responsible for monitoring the restored wetland for a period of two (2) years following completion of the planting work. An experienced wetland consultant shall conduct the monitoring. A complete assessment of the wetland's development shall be made annually, and shall be provided to the WRD with annual reports no later than December 31 of each year. The annual monitoring report, shall be prepared in accordance with the requirements found in Exhibit B of this Judgment.

I. Should the wetland restoration area fail to become established as a wetland community as designed after two (2) complete growing seasons, or fail to demonstrate satisfactory progress towards a self-sustaining wetland system as designed, or fail to meet the performance standards identified in Exhibit C, Defendants shall:

1. Assess the problem(s) and identify the probable causes;
2. Develop reasonable and necessary corrective measures as a revision to the original plan;
3. Reasonable and necessary corrective measures may include, but are not limited to, regrading soils to improve hydrology, reseeding, and/or replanting of wetland plants;
4. Submit a copy of the proposed corrective measures and dates of implementation to the WRD for review and approval (corrective action plan); and
5. Upon WRD approval, implement the corrective measures as specified in the corrective action plan.

VII. EMERGENCY RESPONSE

A. In the event of a discharge to surface waters or other spill of polluting materials to the ground or water attributable to Defendants' restoration and/or seawall installation activities, Defendants shall undertake the following measures:

1. Upon the discovery of a discharge of any waste, wastewater, or other spill of polluting materials to the ground or water, Defendants shall take immediate corrective measures to contain any losses of waste, wastewater, or other polluting materials to prevent any further discharge or spill to waters of the state.
2. Defendants shall immediately upon discovery of any discharge of waste, wastewater, or other polluting materials to surface

waters of the state notify the WRD Lansing District Office.

Emergency notification shall be as follows:

- a. Monday through Friday during the hours of 8:00 AM to 5:00 PM, contact the WRD Lansing District Office.
- b. at all other times, contact the Pollution Emergency Alerting System (PEAS) Hotline at 800-292-4706.

3. In addition to the verbal notification requirement above, Defendants shall provide written notification to the WRD Lansing District Supervisor and the Chief of WRD Enforcement Unit within ten (10) calendar days following the discovery of any discharge of waste, wastewater, or other spill of polluting materials to the ground or water. The written notification shall include:

- a. a description and cause of the discharge or other spill, including an estimate of the discharge volume, and any analytical data in the possession of Defendants related to the discharge or spill;
- b. the estimated duration of the discharge or other spill, including the date and time of the commencement and cessation of the discharge to the extent known;
- c. the corrective measures that were or will be implemented to prevent a future occurrence; and

- d. copies of all pertinent records maintained pursuant to Section IX of this Judgment.

VIII. REPORTING

A. Defendants shall verbally report any violation of this Judgment, excluding discharges to surface waters or other spill of polluting materials to the ground or water reported in accordance with Section VII above, to the WRD Lansing District Supervisor not later than the close of the next business day following detection of such violation and shall provide a written report within fourteen (14) business days after detection of such violation to both the WRD Lansing District Supervisor and the Chief of the WRD Enforcement Unit. The written report shall include a detailed description of the violation, the precise cause or causes of the violation, a detailed description of any action taken or proposed to correct the violation, and a schedule for the implementation of any proposed corrective action. Defendants shall report any anticipated violation of this Judgment to the WRD Lansing District Supervisor in advance of the relevant deadlines whenever reasonably practicable.

IX. RECORD RETENTION AND ACCESS TO INFORMATION

A. Until five (5) years after the termination of this Judgment, Defendants shall retain, and shall instruct their contractors, agents, and representatives to preserve, all non-identical copies of records and documents, including records or

documents in electronic form, that this Judgment requires Defendants to create or maintain.

B. Upon MDEQ request, Defendants shall provide to MDEQ copies of all non-confidential documents and information within the possession or control of Defendants, its employees, contractors, agents, or representatives that this Judgment requires Defendants to create or maintain. Defendants shall not prevent their employees, contractors, agents, or representatives from discussing with MDEQ any relevant facts, except for privileged information, concerning the performance of activities undertaken pursuant to this Judgment.

C. This Judgment in no way limits or affects any right to obtain information held by MDEQ pursuant to applicable laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain records or information imposed by applicable laws, regulations, or permits.

X. ACCESS

A. Upon the Effective Date of this Judgment and to the extent the Property covered by this Judgment is owned, controlled by, or available to Defendants or successors in interest, MDEQ, as well as its authorized employees, contractors, and consultants shall, upon presentation of proper credentials, have access at all reasonable times to the Property for the purpose of conducting any activity for which access is required for the implementation of this Judgment or the continued evaluation of Defendants' compliance with Part 31, Part 91, Part 301, and Part 303 of the NREPA, including, but not limited to:

1. Monitoring activities taking place pursuant to this Judgment;
2. Verifying any data or information submitted to MDEQ;
3. Conducting investigations relating to discharges of potentially injurious substances at or from the Property;
4. Obtaining samples;
5. Assessing the need for corrective action or other response activities at or near the Property;
6. Assessing pollution control structures (e.g., soil erosion and sedimentation control measures) to assure the effectiveness and integrity of the structure(s);
7. Inspecting and copying non-privileged records, inspection logs, contracts, and other documents maintained pursuant to this Judgment;
8. Communicating with Defendants, Defendants' personnel, representatives, or consultants for the purpose of assessing compliance with this Judgment;
9. Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Judgment or Part 31, Part 91, Part 301, and Part 303 of the NREPA;
10. Assuring the protection of public health, safety, and welfare and the environment; and

11. Conducting tests and inspections pursuant to Part 31, Part 91, Part 301, and Part 303 of the NREPA.

XI. NOTICES

A. Except where this Judgment already identifies the persons to whom a document or information is to be submitted, any submittal, notice, report, documentation, or recitation required by this Judgment shall be submitted to the attention of:

For Plaintiff:

With respect to the wetlands restoration:

Justin Smith
Lansing District Office
525 West Allegan Street
P.O. Box 30242
Lansing, Michigan 48909
517-284-6669

With respect to any other submission:

Cheryl Bartley
Lansing District Office
525 West Allegan Street
P.O. Box 30242
Lansing, Michigan 48909
517-284-6658

and

Barry Selden
Water Enforcement Unit Chief
525 West Allegan Street
P.O. Box 30458
Lansing, Michigan 48909-7958
517-284-5490

For Defendants:

Chad Linders
4198 McCormick
Linden, Michigan 48451
810-333-2683

and

Paul F. Bohn
Fausone Bohn, LLP
41700 W. Six Mile Road, Suite 101
Northville, Michigan 48168
248-380-0000 ext. 9988

Either Party may substitute others for those designated to receive such notices by providing written notice to the other Party.

XII. DELAYS IN PERFORMANCE, EXTENSION REQUESTS, AND FORCE MAJEURE

A. Defendants shall perform the requirements of this Judgment within its time limits, unless events, which constitute a Force Majeure, prevent or delay performance or unless the WRD Chief grants an extension pursuant to Paragraph G of this section.

B. Any performance delay attributable to a Force Majeure shall not be deemed a violation of Defendants' obligations under this Judgment in accordance with this section. For this Judgment's purpose, Force Majeure means an occurrence or non-occurrence of the requirements under this Judgment arising from causes beyond the control of Defendants and for which Defendants are without fault for the occurrence or non-occurrence, including, but not limited to: an act of God; inordinate delay by MDEQ of submissions required under this Judgment; and the acts or

omissions of a third party not under contractual obligations to Defendants that could not have been avoided or overcome through Defendants' due diligence and that resulted in a delay of performance of an obligation under this Judgment. Force Majeure does not include, among other things, unanticipated or increased costs, changed financial circumstances (including a failure to obtain funding), or failure to apply for a permit or license as a result of Defendants' action or omission.

C. Defendants shall telephone the WRD Lansing District Supervisor within forty-eight (48) hours of discovering any event, which causes a delay in its compliance with any provision of this Judgment. Verbal notice shall be followed by written notice to both the WRD Lansing District Supervisor and Chief of the WRD Enforcement Unit within ten (10) calendar days and shall describe in detail the delay's anticipated length, the delay's precise cause or causes, the measures that Defendants have taken to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Defendants shall use all reasonable measures to avoid or minimize any such delay.

D. Defendants' failure to comply with the notice requirements of Paragraph C of this section shall render the Force Majeure provisions of this section void as to the particular incident involved. MDEQ may, at its sole discretion and in appropriate circumstances, provide Defendants with a written waiver of the notice requirements of Paragraph C of this section.

E. If the Parties agree that the delay or anticipated delay was beyond the control of Defendants, this may be so stipulated, and the Parties may petition the

Court for an appropriate Judgment modification. Defendants bear the burden of proving that any delay was beyond its reasonable control and of showing that Defendants have met the requirements under this section.

F. In the absence of a Force Majeure, Defendants and MDEQ agree that the WRD Chief may, but in no circumstances is obligated to, grant Defendants an extension of the specified deadlines set forth in this Judgment. Any extension shall be preceded by a timely written request, received by MDEQ no later than ten (10) business days prior to the pertinent deadline, which shall include:

1. An identification of the specific deadline that will not be met.
2. A detailed description of what will prevent Defendants from meeting the deadline.
3. A description of the measures Defendants have taken or intend to take to meet the required deadline.
4. The length of the extension requested and the specific date on which the obligation will be met.

The WRD Chief shall respond promptly to such requests and shall not unreasonably withhold approval for such requests.

G. Any extension of the specified deadlines or other modifications and amendments of this Judgment shall be signed by both Parties, shall have as their effective date the date on which they are signed by the WRD Chief, and shall be incorporated into and become an enforceable part of this Judgment upon approval of the Court. A denial by the WRD Chief that an event constitutes a Force Majeure

may be disputed by Defendants by timely filing a motion with the Court pursuant to Section XVII.

H. An extension of one compliance date based upon a particular incident does not mean that Defendants qualify for an extension of a subsequent compliance date without providing proof that an extension to a separate requirement under this Judgment is justifiable.

XIII. REIMBURSEMENT OF COSTS AND PAYMENT OF AGREED CIVIL FINES

A. Defendants agree to pay the total amount of \$ 9,000.00 as full settlement of enforcement costs and civil liabilities alleged by Plaintiff in its Complaint in this matter of MDEQ-alleged violations of past violations of Part 31, Part 91, Part 301, and Part 303 of the NREPA, of which the total amount of \$5,000.00 is allocated by agreement of the Parties to Plaintiff's alleged enforcement costs.

B. Defendants shall pay the amount listed in Paragraph A of this section according to the following schedule:

1. \$3,000.00 within 30 calendar days after the Effective Date of this Judgment.
2. \$3,000.00 on or before the first anniversary of the Effective Date of this Judgment.
3. \$3,000.00 on or before the second anniversary of the Effective Date of this Judgment.

C. Defendants shall pay said amounts by certified or cashier's check made payable to the State of Michigan and delivered to MDEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to MDEQ, Revenue Control Unit, 1st Floor, Van Wagoner Building, 425 W. Ottawa St., Lansing, Michigan 48933. MDEQ will send reminder invoices to Defendants in advance of the due dates of the payments to be made under Paragraph B of this section. To ensure proper credit, all payments made pursuant to this Judgment must include the Payment Identification Number **WRD-40104** on the face of all checks, or in the cover letter with the payments.

XIV. STIPULATED FINES

A. The Parties stipulate to the payment of stipulated fines by Defendants in the following manner should violations of this Judgment occur:

1. Any failure to comply with any compliance date in this Judgment shall result in stipulated fines as follows:
 - a. \$200.00 for the first day of violation;
 - b. \$300.00 for the second consecutive day of violation; and
 - c. \$500.00 for the third consecutive day of violation and every consecutive day thereafter.
2. A failure by Defendants to comply with any other provisions of Section VI or any other provision of this Judgment shall result in a stipulated fine of \$250.00 per day, per violation.

B. All stipulated fines shall be paid within thirty (30) days after Defendants' receipt of the demand from MDEQ. Demands for payment shall be sent via certified mail to ensure accuracy regarding the date of receipt. Failure to make any payment required under this Judgment by the specified deadline constitutes a separate violation of this Judgment and is subject to an interest penalty calculated in accordance with Section 600.6013(8) of the Revised Judicature Act, MCL 600.6013(8).

C. Defendants shall pay all stipulated fines and interest penalties by certified or cashier's check made payable to the State of Michigan and delivered to MDEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to MDEQ, Revenue Control Unit, 1st Floor, Van Wagoner Building, 425 W. Ottawa St., Lansing, Michigan 48933. All payments shall be made within thirty (30) days after receipt of an invoice from MDEQ. To ensure proper credit, all payments made pursuant to this Judgment must include the Payment Identification Number **WRD-40104** on the face of all checks or in the cover letter with the payment.

D. Defendants agree not to contest the legality of any stipulated fines or interest penalties assessed under this section, but reserve the right to dispute the factual basis upon which MDEQ demands stipulated fines or interest penalties.

E. Liability for or payment of stipulated fines under this Judgment shall not preclude MDEQ from seeking injunctive relief or other relief to which MDEQ is entitled for Defendants' failure to comply with other specific requirements of this

Judgment, or failure to comply with Part 31, Part 91, Part 301, and Part 303 of the NREPA or any other applicable law, except that Plaintiff shall not seek additional monetary relief for any violations for which Plaintiff has accepted stipulated fines under this Judgment.

XV. RESERVATION OF RIGHTS

A. With respect to any violations not expressly addressed and resolved by this Judgment, MDEQ reserves the right to pursue any other remedies to which it is entitled for any failure to comply with the requirements of any state or federal law, including the NREPA and its rules.

B. This Judgment does not limit the rights of Defendants or the State of Michigan against any third parties.

XVI. GENERAL PROVISIONS

A. Severability.

Should a court of competent jurisdiction declare any provision of this Judgment to be unenforceable, the remaining provisions shall remain in effect.

B. Modification.

Any Party to this Judgment may petition the Court for modification of this Judgment including its termination prior to expiration of the effective period. Any modification must be in writing and approved by the Court. No Party may petition the Court for a modification of this Judgment without first having made a good faith effort to reach agreement with the other Party on the terms of any such modification. The Parties may petition the Court to modify any requirement or

provision of this Judgment by mutual agreement or may modify this Judgment through a writing signed by authorized representatives of the Parties.

C. Other Laws.

This Judgment does not affect Defendants' responsibility to comply with any other applicable state, federal, or local laws or regulations including the procurement of required permits and/or approvals, or with any order of this or any other court, including, without limitation, any requirements under Part 31, Part 91, Part 301, and Part 303 of the NREPA or its rules or any amendments thereto.

D. Settlement.

This Judgment is in settlement and satisfaction of all civil claims against Defendants alleged by MDEQ in the Complaint.

XVII. RETENTION OF JURISDICTION

Prior to termination of this Judgment in accordance with Section XVIII below, this Court shall retain jurisdiction over this action to modify or enforce the terms of this Judgment, assess disputed stipulated fines, resolve all other disputes arising under its terms, or to take any action necessary or appropriate for construction or implementation of this Judgment.

XVIII. TERMINATION

This Judgment shall terminate upon written request of Defendants and written approval from MDEQ along with approval of this Court through the issuance of a Satisfaction of Judgment. The written request of Defendants shall

include a certification by Defendants that they have: (1) paid in full all fines and costs owed to the State of Michigan under this Judgment; (2) completed all wetland restoration activities and obligations as required in this Judgment; and (3) not received a Notice Letter or other document from MDEQ alleging a violation of Part 31, Part 91, Part 301, and Part 303 of NREPA or this Judgment for three (3) consecutive years. Provided that such certification is made and not reasonably disputed, MDEQ will not withhold its written approval to terminate this Judgment.

XIX. SEPARATE DOCUMENTS

This Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Judgment may be executed in duplicate original form.

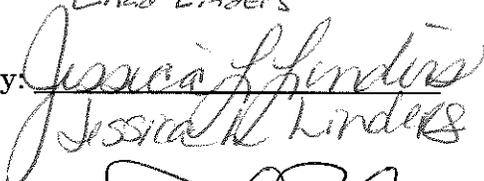
XX. SIGNATORIES

The signatories to this Judgment certify that they are authorized to execute this Judgment and to legally bind the Parties they represent to the requirements of this Judgment.

FOR DEFENDANTS:

By: 
Chad Linders

Dated: 8/24/2015

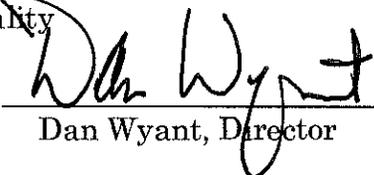
By: 
Jessica Linders

Dated: 8/24/15

By: 
Paul F. Bohn (P41863)
Attorney for Defendants

FOR PLAINTIFF:

Michigan Department of Environmental
Quality

By: 
Dan Wyant, Director

Dated: 9.9.15

By: 
Brian J. Negele (P41846)
Attorney for Plaintiff

Dated: 8-28-2015

IT IS SO ORDERED and ADJUDGED this 22 day of September, 2015.

RICHARD B. YUILLE
Richard B. Yuille, ~~P-22664~~ Court Judge

14-102172-CE

Exhibit B

Wetland Restoration Monitoring Requirements

Defendants shall monitor the restored wetland area for a minimum of two (2) years following grading, planting, and introduction of hydrology. An annual monitoring report, which compiles and summarizes all data collected during the monitoring period, shall be submitted no later than December 31 of each year. Defendants shall conduct the following activities and provide the information collected in the monitoring reports:

- a. Measure inundation and saturation during the growing season. Hydrology data shall be measured and provided at sufficient sample points to accurately depict the water regime of each wetland type.
- b. Sample vegetation in plots located along a transect in the restored wetland area once between July 15 and August 31. The minimum number of sample plots for each wetland type shall be no fewer than four (4). Sample plots shall be located on the sample transect at evenly spaced intervals or by another approach acceptable to the MDEQ. If additional or alternative sample transects are needed to sufficiently evaluate each wetland type, they must be approved in advance in writing by the MDEQ.

The herbaceous layer (all non-woody plants and woody plants less than 3.2 feet in height) shall be sampled using a 3.28 foot by 3.28 foot (one square meter) sample plot. The data recorded for each herbaceous layer sample plot shall include a list of all living plant species, and an estimate of percent cover in five (5) percent intervals for each species recorded, bare soil areas, and open water relative to the total area of the plot.

Provide plot data and a list of all the plant species identified-in-the-plots-and-otherwise observed during monitoring. Data for each plant species must include common name, scientific name, wetland indicator category from the U.S. Fish and Wildlife Service's "National List of Plant Species That Occur in Wetlands" for Region 3, and whether the species is considered native according to the Michigan Floristic Quality Assessment (Michigan Department of Natural Resources, 2001). Nomenclature shall follow Voss (1972, 1985, and 1996) or Gleason and Cronquist (1991).

The locations of the sample transect and plots shall be identified in the annual monitoring report. Each transect shall be permanently staked at a frequency sufficient to locate the transect in the field.

- c. Delineate any extensive (greater than 0.01 acre in size) open water areas, bare soil areas, areas dominated by invasive species, and areas without a predominance of wetland vegetation, and provide their location on a plan view.
- d. Document any sightings or evidence of wading birds, songbirds, waterfowl, amphibians, reptiles, and other animal use (lodges, nests, tracks, scat, etc.) within the wetland noted during monitoring. Note the number, type, date, and hour of the sightings and evidence.
- e. Inspect the site, during all monitoring visits and inspections, for oil, grease, man-made debris, and all other contaminants and report findings. Rate (e.g., poor, fair, good, excellent) and describe the water clarity in the mitigation wetland.
- f. Provide annual photographic documentation of the development of the Wetland Restoration Area during vegetation sampling from permanent photo stations located within the restored wetland area. At a minimum, photo stations shall be located at both ends of each transect. Photos must be labeled with the location, date photographed, and direction.
- g. Provide a written summary of data from previous monitoring periods and a discussion of changes or trends based on all monitoring results. This summary shall include a calculation of the acres of each wetland type established, a plan view drawing depicting each ecological type, and identification of all performance standards and whether each standard has been met.
- h. Provide a written summary of all the problem areas that have been identified and potential corrective measures to address them.

Exhibit C

Wetland Restoration Performance Standards

The following performance standards will be used to evaluate the wetland restoration area:

- a. Construction has been completed in accordance with the approved wetland restoration plan by _____
- b. The wetland restoration area shall be characterized by the presence of water at a frequency and duration sufficient to support a predominance of wetland vegetation and the wetland types specified at the end of the monitoring period. Wetland species refers to species listed as facultative and wetter (FAC, FACW, OBL) on the U.S. Army Corps of Engineer's "National List of Vascular Plant Species That Occur in Wetlands" for Region 3.
- c. A layer of high-quality topsoil from the A horizon of an organic or loamy surface texture soil consistent with the surrounding, undisturbed areas.
- d. The mean percent cover of native wetland species in the herbaceous layer at the end of the monitoring period shall not be less than 60 percent. The minimum number of native wetland species shall not be less than 15.
- e. Extensive areas of open water and submergent vegetation areas having no emergent and/or rooted floating vegetation shall not exceed 20 percent of the wetland restoration area. Extensive areas of bare soil shall not exceed five percent of the wetland restoration area. For the purposes of these performance standards, extensive refers to areas greater than 0.01 acre (436 square feet) in size.
- i. The mean percent cover of invasive species including, but not limited to, *Phragmites australis* (Common Reed), *Lythrum salicaria* (Purple Loosestrife), and *Phalaris arundinacea* (Reed Canary Grass) shall in combination be limited to no more than ten (10) percent within each wetland type. Invasive species shall not dominate the vegetation in any extensive area of the wetland restoration area.

If the mean percent cover of invasive species is more than ten (10) percent within any wetland type or if there are extensive areas of the wetland restoration in which an invasive species is one of the dominant plant species, the property owner shall submit an evaluation of the problem to the MDEQ. If the property owner determines that it is infeasible to reduce the cover of invasive species to meet the above performance standard, the property must submit an assessment of the problem, a control plan, and the projected percent cover that can be achieved for review by the MDEQ. Based on this information, the MDEQ may approve an alternative invasive species standard. Any alternative invasive species standard must be approved in writing by the MDEQ.