



1.4. The EPA Administrator and the Attorney General for the United States Department of Justice have jointly determined that this action, which includes the allegation that a CAA violation commenced more than 12 months ago, but does not seek more than \$270,000 in CAA penalties, is an appropriate administrative penalty action under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. § 22.13(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes final.

2.2. A concise statement of the factual basis for alleging violations of the CAA, together with specific references to the provisions of the CAA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

## **III. EPA'S ALLEGATIONS**

3.1. Respondent is a limited liability company licensed to do business in the state of Washington.

3.2. Respondent is the owner and operator of a cold storage warehouse in Toppenish, Washington ("facility").

3.3. Respondent's facility is a "stationary source" as that term is defined under 40 C.F.R. § 68.3.

3.4. Anhydrous ammonia is a "regulated substance" under Section 112(r)(3) of the CAA, with a threshold quantity of 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.5. At the facility, Respondent operates a process that involves anhydrous ammonia above the 10,000-pound threshold level.

3.6. The process referenced in paragraph 3.5 is categorized as Program 3, as that program level is defined in 40 C.F.R. § 68.10(d).

3.7. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations at 40 C.F.R. Part 68, require the owner and operator of a stationary source at which a regulated substance is present in more than a threshold quantity to develop and implement a risk management program to detect and prevent or minimize accidental releases of such substances from the stationary source and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

3.8. Respondent is the owner and/or operator of a stationary source at which anhydrous ammonia is present above the 10,000-pound threshold level in a process categorized as Program 3.

3.9. Based on an EPA inspection of the facility on June 21, 2006, and follow-up information provided by Respondent, EPA alleges that Respondent has committed the following violations from at least August 2, 2004 through June 1, 2007:

#### **MANAGEMENT**

- 1) 40 C.F.R. § 68.15(a) – Failure to develop a management system to oversee the implementation of the risk management program elements.
- 2) 40 C.F.R. § 68.15(b) – Failure to assign a qualified person or position that has overall responsibility for the development, implementation, and integration of the risk management program elements.
- 3) 40 C.F.R. § 68.15(c) – Failure to document the names and positions of other persons responsible for implementing individual requirements of the risk

management program and define the lines of authority through an organization chart or similar document.

#### **HAZARD ASSESSMENT**

- 4) 40 C.F.R. § 68.25(a)(2)(iii) – Failure to analyze and report in the risk management plan (RMP) additional worst-case release scenarios for a hazard class if a worst-case release from another covered process at the stationary source potentially affects public receptors differently from those potentially affected by the worst-case release scenario developed under § 68.25(a)(2)(i) or (ii).
- 5) 40 C.F.R. § 68.28(e)(2) – Failure to document the failure scenarios identified under the process hazard analysis described in 40 C.F.R. § 68.67.
- 6) 40 C.F.R. § 68.30(a)-(d) – Failure to consider the estimated population that would be included in the distance to endpoint in the RMP based on a circle with the point of release at the center. Failure to identify the presence of institutions, parks, and recreational areas, and major commercial, office, and industrial buildings in the RMP. Failure to use the most recent Census data, or other updated information, to estimate the population. Failure to estimate the population to two significant digits.
- 7) 40 C.F.R. § 68.33(a)-(b) – Failure to identify the environmental receptors that would be included in the distance to endpoint based on a circle with the point of release at the center. Failure to rely on information provided by the local U.S.G.S. maps, or on any data source containing U.S.G.S. data, to identify environmental receptors.
- 8) 40 C.F.R. § 68.36(a) – Failure to review and update the off-site consequence

analyses at least once every five years.

- 9) 40 C.F.R. § 68.36(b) – Failure to complete a revised analysis and submit a revised RMP within six months of a change in processes, quantity stored or handled, or any other aspect that might reasonably be expected to increase or decrease the distance to the endpoint by a factor of two or more.
- 10) 40 C.F.R. § 68.39(a) – Failure to maintain the following records on the offsite consequences analyses for worst-case scenarios: a description of the vessel or pipeline and substance selected, the assumptions and parameters used, the rationale for selection, and the anticipated effect of the administrative controls and passive mitigation on the release quantity and rate.
- 11) 40 C.F.R. § 68.39(b) – Failure to maintain the following records on the offsite consequences analyses for the alternative release scenarios: a description of the scenarios identified, the assumptions and parameters used, the rationale for the selection of the specific scenarios chosen, and the anticipated effect of the administrative controls and mitigation on the release quantity and rate.

#### **PROCESS HAZARD ANALYSIS**

- 12) 40 C.F.R. § 68.67(e) – Failure to establish and document a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and are documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations.

- 13) 40 C.F.R. § 68.67(f) – Failure to document that the process hazard analysis (PHA) had been updated and revalidated by a team every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process.

#### **OPERATING PROCEDURES**

- 14) 40 C.F.R. § 68.69(c) – Failure to certify annually that the operating procedures are current and accurate and have been reviewed as often as necessary.

#### **OPERATOR TRAINING**

- 15) 40 C.F.R. § 68.71(a)(1) – Failure to document that each employee involved in operating a process, and each employee before being involved in operating a newly assigned process, has been initially trained in an overview of the process and in the operating procedures and that the initial training included emphasis on the safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.
- 16) 40 C.F.R. § 68.71(a)(2) – Failure to certify in lieu of initial training for those employees already involved in operating a process on June 21, 1999, that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.
- 17) 40 C.F.R. § 68.71(b) – Failure to document that refresher training has been provided at least every three years, or more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process.
- 18) 40 C.F.R. § 68.71(c) – Failure to document in the record that each employee involved in operating a process has received and understood the training required.

## **MECHANICAL INTEGRITY**

- 19) 40 C.F.R. § 68.73(c) – Failure to document training for each employee involved in maintaining the on-going integrity of the process equipment.
- 20) 40 C.F.R. § 68.73(d)(4) – Failure to document each inspection and test that had been performed on process equipment, identifying the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.
- 21) 40 C.F.R. § 68.73(e) – Failure to correct deficiencies in equipment that are outside acceptable limits defined by the process safety information before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

## **MANAGEMENT OF CHANGE**

- 22) 40 C.F.R. § 68.75(b)(1)-(5) – Failure to establish and implement written procedures regarding management of change that assure that the following considerations are addressed prior to any change: (1) the technical basis for a proposed change; (2) impact of the change on safety and health; (3) modifications to operating procedures; (4) necessary time period for the change; and (5) authorization requirements for the proposed change.
- 23) 40 C.F.R. § 68.75(c) – Failure to document that employees involved in operating a process, and maintenance and contract employees whose job tasks would be affected by a change in the process, are informed of, and trained in, the change

prior to start-up of the process or affected parts of the process.

- 24) 40 C.F.R. § 68.75(d) – Failure to update the process safety information required by 40 C.F.R. § 68.65 after a change to process chemicals, technology, equipment, and procedures, or a change to the stationary source that affects the covered process.
- 25) 40 C.F.R. § 68.75(e) – Failure to update the operating procedures or practices required by 40 C.F.R. § 68.69 after a change to the covered process.

#### **PRE-STARTUP SAFETY REVIEW**

- 26) 40 C.F.R. § 68.77(a) – Failure to document that the owner or operator performed a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.
- 27) 40 C.F.R. § 68.77(b)(3)-(4) – Failure to conduct a pre-startup safety review prior to the introduction of the regulated substance to the process to confirm that a process hazard analysis was performed and recommendations resolved or implemented prior to startup, and modified stationary sources met the requirements contained in the management of change regulation at 40 C.F.R. § 68.75; and training of each employee involved in operating a process was completed.

#### **COMPLIANCE AUDIT**

- 28) 40 C.F.R. § 68.79(a) - Failure to certify that at least every three years, compliance audits were conducted that evaluate compliance with the provisions of the prevention program and verify that the developed procedures and practices are

adequate and being followed.

- 29) 40 C.F.R. § 68.79(b) – Failure to ensure that the audit was conducted by at least one person knowledgeable in the process.
- 30) 40 C.F.R. § 68.79(c) – Failure to ensure that audit findings are documented in the report.
- 31) 40 C.F.R. § 68.79(d) – Failure to promptly determine and document an appropriate response to each of the findings of the audit and document that deficiencies had been corrected.
- 32) 40 C.F.R. § 68.79(e) – Failure to retain the two most recent compliance reports.

#### **EMPLOYEE PARTICIPATION**

- 33) 40 C.F.R. § 68.83(b) – Failure to consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in the chemical accident prevention rule.

#### **EMERGENCY RESPONSE**

- 34) 40 C.F.R. § 68.90(b)(1) - Failure to document whether the facility is included in the community emergency response plan developed under 42 U.S.C. § 110003.

#### **RISK MANAGEMENT PLAN**

- 35) 40 C.F.R. § 68.190(b)(5) – Failure to revise and update the submitted risk management plan within six months of a change requiring a revised PHA or hazard review.
- 36) 40 C.F.R. § 68.195(b) – Failure to submit a correction of the emergency contact information required by § 68.160(b)(6), within 30 days of a change in that

information that occurred after June 21, 2004.

#### **IV. CONSENT AGREEMENT**

The parties to this action hereby stipulate as follows:

4.1. Respondent admits the jurisdictional allegations contained in Part I, above.

4.2. Respondent neither admits nor denies the specific factual allegations in Part III, above.

4.3. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), taking into consideration the size of Respondent's business, the economic impact of the proposed penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, cooperation with EPA, the duration of the violations as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violations (in addition to such other factors as justice may require), EPA and Respondent agree that an appropriate penalty to settle this action is \$25,942.

4.4. Respondent consents to the issuance of the Final Order recited herein and to payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent shall note on the check the title and docket number of this case. Respondent may also pay the penalty by wire transfer in accordance with instructions provided by EPA.

4.6. Respondent shall serve photocopies of the check or documentation of wire transfer on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158  
Seattle, Washington 98101-3140

Office of Compliance and Enforcement  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, Mail Stop ECL-116  
Seattle, Washington 98101-3140  
Attn: Calvin Terada

4.7. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.8. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, then pursuant to Section 113(d)(5), 42 U.S.C. § 7413(d)(5), Respondent shall pay the following amounts:

- a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the date the penalty was due from Respondent; provided, however, that no interest

shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the date a conformed copy of this CAFO is mailed to Respondent.

b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondent shall pay (in addition to any assessed penalty and interest) attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to ten percent (10%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.9. Respondent shall complete a supplemental environmental project (SEP), which the parties agree is intended to secure significant environmental benefits, pursuant to the following conditions:

a. Within twelve (12) months of the effective date of this CAFO, Respondent shall purchase and install an Internal Ammonia Alarm System and Related Safety Equipment ("alarm system") and train staff on the use of the alarm system at a total cost of at least \$90,000, and begin operation of the alarm system. In the event of an ammonia release, this project will improve response time and safety for both employees and emergency responders.

b. Further details concerning the SEP referenced in subparagraph (a) above are contained in Attachment A to this CAFO.

4.10. Respondent shall submit a SEP Completion Report to EPA no later than thirty (30) days following completion of the SEP. Failure by Respondent to timely submit a complete and accurate SEP Completion Report shall be deemed a violation of this CAFO and shall subject Respondent to stipulated penalties pursuant to paragraph 4.12 of this CAFO. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented.
- b. An itemization of costs incurred by Respondent in implementing the SEP (documented by purchase orders, receipts, canceled checks, etc.);  
and
- c. Certification in the form of a signed declaration by Respondent that the SEP has been fully implemented pursuant to this CAFO. Respondent shall, by its officers, sign and certify under penalty of law that the information contained in the SEP Completion Report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

4.11. Following receipt of the SEP Completion Report described in the preceding paragraph, EPA will do one of the following:

- a. Approve the SEP Completion Report;

b. Reject the SEP Completion Report, notify Respondent in writing of the deficiencies in the Report with reasonable specificity, and grant Respondent thirty (30) days in which to correct any deficiencies.

c. Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 4.12 below.

If EPA elects to exercise option (b) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not made a final determination about the adequacy of SEP completion itself, EPA shall allow Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this thirty (30) day period, EPA shall provide a written statement of its decision on the adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 4.12 of this CAFO.

4.12. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in paragraph 4.9 above, Respondent shall be liable for stipulated penalties according to the following provisions:

a. If the SEP has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$64,992.

b. If the SEP is satisfactorily completed, but Respondent spent less than \$81,000, Respondent shall pay a stipulated penalty to the United States in the amount of the difference between \$81,000 and the amount spent to complete the SEP up to a maximum of \$64,992.

c. If the SEP is satisfactorily completed, and Respondent spent at least \$81,000, Respondent shall not be liable for any stipulated penalty.

d. If the SEP Completion Report required by paragraph 4.11 of this CAFO is not timely submitted, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report is due until it is submitted. Such stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue until the report is submitted, provided that the total stipulated penalties for failure to submit the report shall not exceed \$64,992.

4.13. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be made by EPA.

4.14. Respondent shall pay stipulated penalties due pursuant to the terms of this CAFO within fifteen (15) days of receipt of a written demand by EPA for payment of such penalties. Stipulated penalties shall be paid in accordance with the provisions of

paragraphs 4.5 and 4.6 of this CAFO. Interest and late charges shall accrue as described in paragraph 4.8 of this CAFO.

4.15. Respondent will grant access, as allowed by law and regulation, for EPA to inspect its site in order to confirm that the SEP has been implemented in conformity with the representations herein.

4.16. All reports and submissions required by this CAFO shall be made to:

U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900, Mail Stop ECL-116  
Seattle, Washington 98101-3140  
Attn: Calvin Terada

4.17. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures in performing this SEP.

4.18. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP, shall include the following language: "This project was undertaken in connection with settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act."

4.19. The following provisions address excusable delay:

a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify EPA in writing not more than ten (10) days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which

those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this CAFO based on such incident.

b. If the parties agree that the delay or anticipated delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance may be extended for a period equal to the delay resulting from such circumstances, or other such reasonable time as the parties may agree. In such event, the parties shall stipulate to such extension of time.

c. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of Respondent; EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.

d. The burden of proving that any delay is caused by circumstances entirely beyond the reasonable control of Respondent shall rest with Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event, be a basis for changes in this CAFO or extensions of time under section (b) of

this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

4.20. Respondent hereby certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant, or injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

4.21. The penalty described in paragraph 4.3 of this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purpose of federal taxes.

4.22. Except as described in paragraph 4.8 of this CAFO, each party shall bear its own costs in bringing or defending this action.

4.23. Respondent expressly waives any right to contest the allegations and to appeal the Final Order contained herein and, without admitting or denying the factual allegations contained in the Final Order, consents to the terms of this CAFO and the Final Order.

4.24. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.

4.25. Pursuant to 40 C.F.R. § 22.18(c), full payment of the penalty assessed in this CAFO resolves Respondent's liability for federal civil penalties for the violations and facts alleged in Part III of this CAFO. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent.

Compliance with this CAFO shall not be a defense to any other actions commenced pursuant to laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

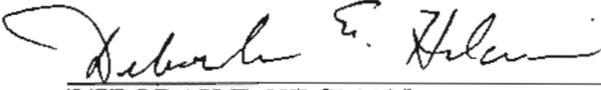
STIPULATED AND AGREED:

WASHINGTON BEEF, LLC

  
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RICK R. STOTT  
Vice President – Business Development  
AGRI BEEF CO.

Dated: Sept 2, 2008

U.S. ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
DEBORAH E. HILSMAN  
Assistant Regional Counsel

Dated: September 8, 2008

#### V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

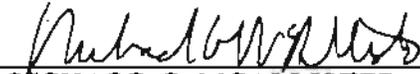
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CAA for the violations and facts alleged in the Consent Agreement above. It does not resolve any other violations of the CAA or any other laws administered by EPA. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not

WASHINGTON BEEF LLC  
CONSENT AGREEMENT AND  
FINAL ORDER

waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations and permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 8<sup>th</sup> day of Sept, 2008



\_\_\_\_\_  
RICHARD G. MCALLISTER  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Washington Beef, LLC, DOCKET NO.: CAA-10-2008-0105** was filed with the Regional Hearing Clerk on September 8, 2008.

On September 8, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Deborah Hilsman, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on September 8, 2008, to:

Rick R. Stott  
Vice President - Business Development  
Agri Beef Company  
1555 Shoreline Drive, 3<sup>rd</sup> Floor  
Boise, ID 83702

DATED this 8<sup>th</sup> day of September 2008.



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Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10