

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

<p>IN THE MATTER OF MORAN BEEF, INC., Respondent</p>	<p>Docket No. CWA-07-2010-0080 RESPONDENT'S SUPPLEMENTAL PREHEARING EXCHANGE</p>
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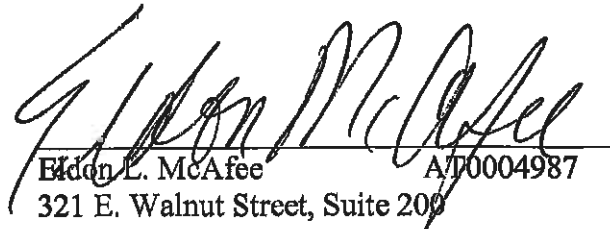
COMES NOW the Respondent, Moran Beef, Inc., by and through its attorney, Eldon L. McAfee, and for its Supplemental Prehearing Exchange:

1. In addition to the documents and exhibits Respondent identified and provided in its Initial Prehearing Exchange, Respondent intends to introduce into evidence the following documents and exhibits:

- Respondent's Exhibit 10: March 10, 2006 fax from Alison Manz of Iowa DNR
- Respondent's Exhibit 11: Aerial photo map of area
- Respondent's Exhibit 12: Aerial photo map of site
- Respondent's Exhibit 13: Aerial photo map of site

Dated this 17th day of March, 2011.

BEVING, SWANSON & FORREST, P.C.

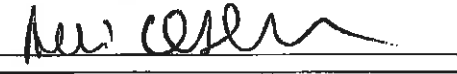


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emcafee@bevinglaw.com

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause herein at their respective addresses disclosed on the pleadings of record on the 17th day of March, 2011.

By: U.S. Mail FAX
 Hand Delivered Overnight Courier
 Federal Express Other: _____

Signature: 

Original and one copy by United States Postal Service to:
Regional Hearing Clerk
U.S. EPA
Region VII
901 North 5th Street
Kansas City, KS 66101

Copy by email and United States Postal Service to:
Steven Sarno
EPA Office of Administrative Law Judges
1200 Pennsylvania Ave. NW
Mail Code 1900L
Washington, DC 20460

Copy by email and United States Postal Service to:
William A. Spratlin, Director
Chris Muehlberger, Asst. Regional Counsel
U.S. EPA
Region VII
901 North 5th Street
Kansas City, KS 66101

[Click here and type return address and phone and fax numbers]

Company Name Here

Fax

To: Joe Turner **From:** Allison Manz, DNR FO4

Fax: (712) 485-2052 **Pages:** 4 (including this page)

Phone: (712) 310-0633 **Date:** 3/10/2006

Re: Open Lot and Confinement Regs **CC:**

Urgent For Review Please Comment Please Reply Please Recycle

Joe-

I apologize for any inconvenience. However, attached are copies of our regulations pertaining to open feedlots and confinements. I hope this helps. If you have any questions please call me.

Also, I tried to call Frank Moran but the cell number he gave me says it's been disconnected. I also tried his home phone but it's been busy.

Sincerely,



Allison Manz, Environmental Specialist



"Aerobic structure" means an animal feeding operation structure other than an egg washwater storage structure which relies on aerobic bacterial action which is maintained by the utilization of air or oxygen and which includes aeration equipment to digest organic matter. Aeration equipment shall be used and shall be capable of providing oxygen at a rate sufficient to maintain an average of 2 milligrams per liter dissolved oxygen concentration in the upper 30 percent of the depth of manure in the structure at all times.

"Agricultural drainage well" means a vertical opening to an aquifer or permeable substratum which is constructed by any means including but not limited to drilling, driving, digging, boring, augering, jetting, washing, or coring and which is capable of intercepting or receiving surface or subsurface drainage water from land directly or by a drainage system.

"Agricultural drainage well area" means an area of land where surface or subsurface water drains into an agricultural drainage well directly or through a drainage system connecting to the agricultural drainage well.

"Anaerobic lagoon" means an unformed manure storage structure, if the primary function of the structure is to store and stabilize manure, the structure is designed to receive manure on a regular basis, and the structure's design waste loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include the following:

1. A runoff control basin which collects and stores only precipitation-induced runoff from an animal feeding operation in which animals are confined to areas which are unroofed or partially roofed and in which no crop, vegetation, or forage growth or residue cover is maintained during the period in which animals are confined in the operation.
2. An anaerobic treatment system that includes collection and treatment facilities for all off gases.

"Animal" means a species classified as cattle, swine, horses, sheep, chickens or turkeys.

"Animal capacity" means the maximum number of animals which the owner or operator will confine in an animal feeding operation at any one time. In a confinement feeding operation, the animal capacity of all confinement buildings will be included in the determination of the animal capacity of the operation, unless the building has been abandoned in accordance with the definition of "abandoned animal feeding operation structure."

"Animal feeding operation" means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. An animal feeding operation does not include a livestock market. Open feedlots and confinement feeding operations are considered to be separate animal feeding operations.

1. For purposes of water quality regulation, Iowa Code section 455B.200B as amended by 2002 Iowa Acts, chapter 1137, section 31, provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. For purposes of the separation distances in Iowa Code section 455B.162, Iowa Code section 455B.161A as amended by 2002 Iowa Acts, chapter 1137, section 9, provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. The distinction is due to regulation of animal feeding operations for water quality purposes under the federal Clean Water Act. The Code of Federal Regulations at 40 CFR §122.23 (1995) sets out the requirements for an animal feeding operation and requires that two or more animal feeding operations under common ownership be considered a single operation if they adjoin each other or if they use a common area or system for manure disposal. However, this federal regulation does not control regulation of animal feeding operations for the purposes of the separation distances in Iowa Code section 455B.162, and therefore the definition is not required by federal law to include common areas for manure disposal.

EXAMPLE 3. Carol has an animal feeding operation with four confinement buildings with below floor formed concrete manure storage tanks and one open feedlot. One confinement building is a farrowing building with a capacity of 72 sows. One confinement building is a nursery building with a capacity of 1,450 pigs. The open feedlot contains 425 sows. Two of the confinement buildings are finishing buildings with a capacity of 1,250 market hogs. The farrowing building contains 72 sows at an average weight of 400 pounds for an animal weight capacity of 28,800 pounds. The nursery building contains 1,450 pigs with an average weight over the production cycle of 25 pounds for an animal weight capacity of 36,250 pounds. The two finishing buildings contain 2,500 market hogs (combined) with an average weight over the production cycle of 150 pounds for an animal weight capacity of 375,000 pounds. The total animal weight capacity of the confinement feeding operation is 440,050 pounds. The weights of the animals in open lots are not included in the calculation of the animal weight capacity of the confinement feeding operation.

"Applicant" means the person applying for a construction or operation permit for an animal feeding operation. The applicant shall be the owner or owners of the animal feeding operation.

"Business" means a commercial enterprise.

"Cemetery" means a space held for the purpose of permanent burial, entombment or interment of human remains that is owned or managed by a political subdivision or private entity, or a cemetery regulated pursuant to Iowa Code chapter 5231 or 566A. A cemetery does not include a pioneer cemetery where there have been six or fewer burials in the preceding fifty years.

"Church" means a religious institution.

"Commercial enterprise" means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, which is customarily and regularly used by the general public during the entire calendar year and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.

"Commercial manure service" means a sole proprietor or business association engaged in the business of transporting, handling, storing, or applying manure for a fee.

"Commercial manure service representative" means a manager, employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the service.

"Common management" means significant control by a person of the management of the day-to-day operations of each of two or more animal feeding operations.

"Common ownership" means the ownership of an animal feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both.

"Confinement feeding operation" means an animal feeding operation in which animals are confined to areas which are totally roofed.

"Confinement feeding operation building" or **"confinement building"** means a building used in conjunction with a confinement feeding operation to house animals.

"Confinement feeding operation structure" means an animal feeding operation structure that is part of a confinement feeding operation.

"Confinement site" means a site where there is located a manure storage structure which is part of a confinement feeding operation, other than a small animal feeding operation.

"Confinement site manure applicator" means a person, other than a commercial manure service or a commercial manure service representative, who applies manure on land if the manure originates from a manure storage structure.

"Open feedlot operation" means an unroofed or partially roofed animal feeding operation if crop, vegetation, or forage growth or residue is not maintained as part of the animal feeding operation during the period that animals are confined in the animal feeding operation.

2005 Iowa Acts, House File 805, section 3, provides that two or more open feedlot operations under common ownership or management are deemed to be a single open feedlot operation if they are adjacent or utilize a common area or system for open feedlot effluent disposal. To determine if two or more open feedlot operations are deemed to be one open feedlot operation, the first test is whether the open feedlot operations are under common ownership or management. If they are not under common ownership or management, they are not one open feedlot operation. The second test is whether the two open feedlot operations are adjacent or utilize a common area or system for open feedlot effluent disposal. If the two operations are not adjacent and do not use a common area or system for open feedlot effluent disposal, they are not one open feedlot operation.

"Open feedlot operation structure" means an open feedlot, settled open feedlot effluent basin, a solids settling facility, or an AT system. "Open feedlot operation structure" does not include a manure storage structure as defined in Iowa Code section 459.102.

"Owner" means the person who has title to the property where the animal feeding operation is located or the person who has title to the animal feeding operation structures. It does not include a person who has a lease to use the land where the animal feeding operation is located or to use the animal feeding operation structures.

"Permanent vegetation cover" means land which is maintained in perennial vegetation cover consisting of grasses, legumes, or both, and includes, but is not limited to, pastures, grasslands or forages.

"Process wastewater" means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

"Production area" means that part of an AFO that includes the area in which animals are confined, the manure storage area, the raw materials storage area, and the waste containment areas. The area in which animals are confined includes, but is not limited to, open lots, housed lots, feedlots, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes, but is not limited to, lagoons, solids settling facilities, settled open feedlot effluent basins, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any area used in the storage, handling, treatment, or disposal of mortalities.

"Professional engineer" means a person engaged in the practice of engineering as defined in Iowa Code section 542B.2 who is issued a certificate of licensure as a professional engineer pursuant to Iowa Code section 542B.17.

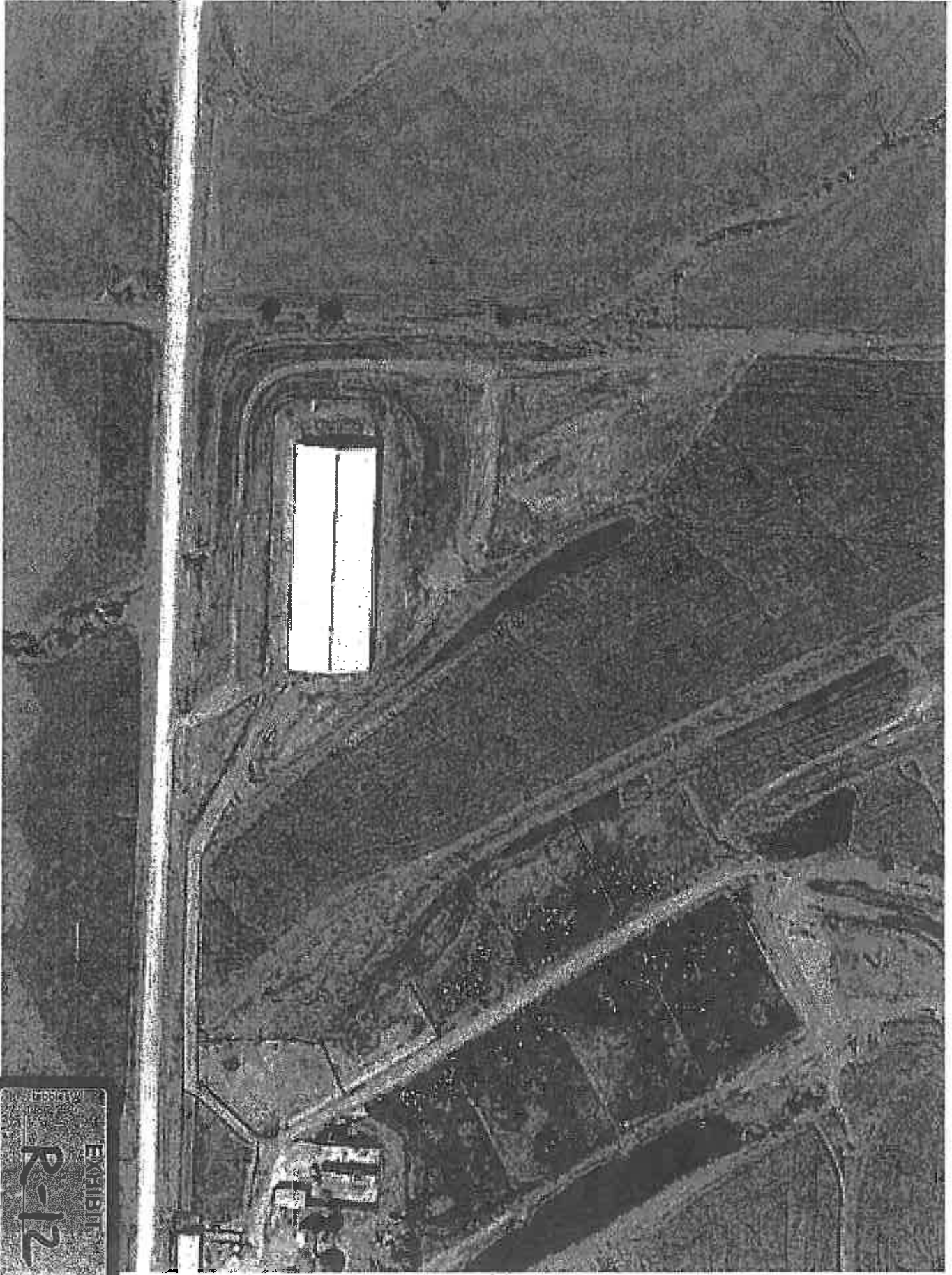
"Release" means an actual, imminent or probable discharge of open feedlot effluent, settled open feedlot effluent, or settleable solids from an open feedlot operation structure to surface water, groundwater, or an actual, imminent or probable discharge directly to a drainage tile line or intake resulting from storing, handling, transporting or land-applying open feedlot effluent, settled open feedlot effluent or settleable solids.



EXHIBIT
R-11

EXHIBIT
R-11

EXHIBIT
R-12



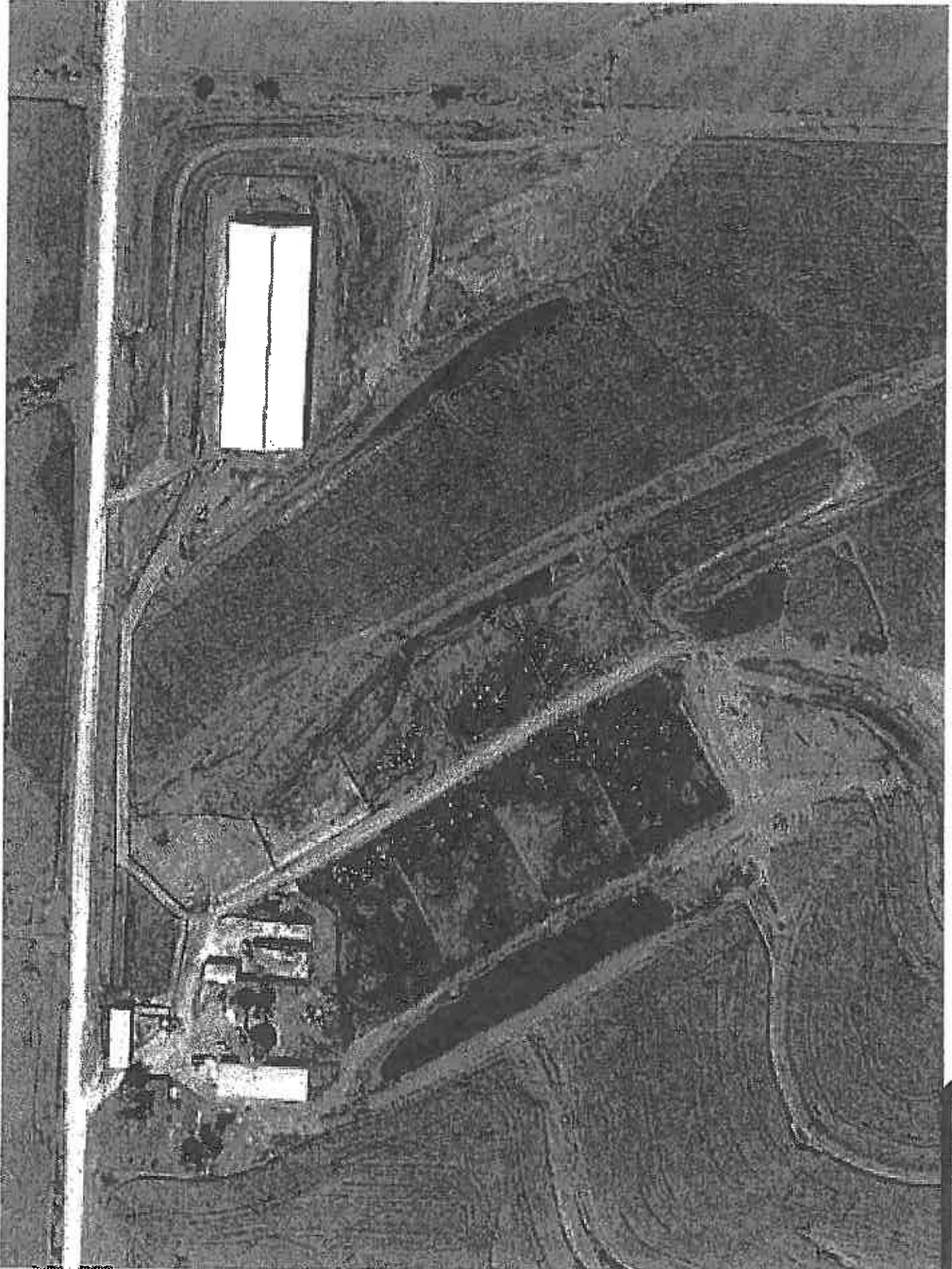


EXHIBIT
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