

1 for how long it would take the DNR to get it back to
2 us. There was no requirement until the Feedlot Bill
3 805, which went into effect July 1 of '05. There was
4 a 60-day time frame in there.

5 When I actually did the--in October, 90, 100
6 days after that feedlot bill went into effect and I
7 did the assessment, the permits were still taking
8 more than 60 days to come back out. So we had no
9 predictability at all when we would get them back
10 from the DNR once everything was submitted.

11 BY MR. BREEDLOVE:

12 Q. Now, I would like you to focus on the
13 deadline established by the POA, the plan of action.

14 A. Yes.

15 Q. Now, was that a deadline established by the
16 facility owner as to when he would submit the final
17 plans to IDNR?

18 A. I believe that would be right. Working with
19 his engineer, yes, he would define a timetable.

20 Q. Now, are you aware, having reviewed and
21 worked with Mr. Vos, that Mr. Vos submitted a date of
22 November 30th, 2004, as to when he would have his
23 final plans in?

24 A. I know he had submitted a POA. I don't
25 remember the dates.

1 Q. You testified to the letter of imminent
2 termination, Complainant's Exhibit 22. It's been,
3 testified to earlier that Mr. Vos submitted November
4 30th, 2004, as his final plan date, the date he had
5 to have that submitted to IDNR.

6 Now, looking at Complainant's Exhibit 22,
7 can you please read into the record the date which
8 the certified mail letter informing Mr. Vos of
9 imminent termination, what date that letter was
10 issued?

11 A. April 28th, 2005. It also says he submitted
12 a POA on February 24 of 2004, and you just said that
13 was November of 2004.

14 Q. To correct the record, I was talking about
15 the date that Mr. Vos had to have his final plans in
16 was November 30th, 2004. That was the date that in
17 his plan of action he said he would have his final
18 plans--

19 A. Okay.

20 Q. --November 30th, 2004.

21 THE ADMINISTRATIVE LAW JUDGE: Let me just
22 add, that's what I noted as well, Mr. Breedlove, the
23 way you stated it. I agree with you.

24 MR. BREEDLOVE: Thank you, Your Honor.

25

1 BY MR. BREEDLOVE:

2 Q. So could you please--how many months late,
3 after Mr. Vos' plans were due, was this letter
4 submitted--or issued to him?

5 A. Well, if it was due November 30th, this was
6 submitted April 28th, so five months.

7 Q. So five months after Mr. Vos had told IDNR,
8 who had submitted the deadline for his own plans,
9 five months after he had missed that date, that's
10 when IDNR issued this letter; is that correct?

11 A. Yes.

12 Q. Now, you had testified that in the case of
13 Mr. Lorison, IDNR just expelled him from the program,
14 submitted a letter, "You're out"?

15 A. Yes.

16 Q. No ands or buts, Mr. Lorison was out of the
17 program?

18 A. That's right.

19 Q. Now, if you look down in this letter, if you
20 notice in the bold print again, Mr. Vos was given an
21 extra 30 days to basically make amends; is that how
22 you read it?

23 A. The highlighting says, "If your final
24 engineering plan is not submitted within 30 days of
25 your receipt of this letter your facility will no

1 longer be a participant in the Iowa Plan."

2 Q. So is it a fair characterization that
3 Mr. Vos was given another chance to meet the terms of
4 the Iowa Plan?

5 A. He was given 30 days to get his plan in.

6 Q. Do you know the date that he submitted his
7 final plans?

8 A. I do not.

9 Q. Now, if I present to you it was December
10 5th, 2005, would that be--would it be consistent to
11 say that he'd met the deadlines in this letter of
12 April 28th, 2005?

13 A. He submitted a final engineering--he
14 submitted an engineering plan in December of '05,
15 yes.

16 Q. That would be nine months after he was
17 expelled from the plan?

18 A. It would be nine months after this letter
19 was received by him.

20 Q. So eight months after expulsion?

21 A. Yes.

22 Q. Earlier you testified to a number of
23 facilities that were assessing their options.

24 A. Yes.

25 Q. Alt tech; is that correct?

1 A. Yes.

2 Q. Depopulating?

3 A. Yes.

4 Q. Did you find a number of facilities, when
5 faced with having to put in controls, did depopulate?

6 A. Yes.

7 Q. Is it a fair characterization that a
8 facility that continued to operate at greater
9 numbers, but without controls in place, would be
10 operating at a competitive advantage over those that
11 depopulated?

12 A. It makes a difference if you're making money
13 in cattle or not. I don't know. Most of the
14 operations that depopulated kept their numbers
15 together somehow; they were feeding in commercial
16 lots. The lots that permitted in the state, almost
17 everyone that spent that money expanded. Many of
18 them are commercial ones. So numbers were moved
19 around. Our cattle numbers held real steady even
20 though we had a number of lots depopulate. We
21 actually grew in cattle numbers in the state because
22 some of the larger lots expanded when they made the
23 permit application.

24 Q. We're not talking about the lots that
25 expanded right now, we're talking about the lots that

1 depopulated.

2 A. Yes. You're asking is there a competitive
3 advantage for them? That's a moot point because if
4 the cattle were losing money at the time, it was a
5 very much uncompetitive advantage. If they were
6 making money, it was a competitive advantage.

7 If you wanted to hold your numbers together,
8 even though you did--you were 1,300 at home, you went
9 down to 950, and you rented a pen at your neighbor's,
10 you still had your 1,300 head of cattle. I don't see
11 that as competitive or noncompetitive advantage.

12 Q. Let me ask this as a follow-up question:
13 The facilities that met the requirements of the Iowa
14 Plan and built controls, the capital expenditures are
15 quite high, aren't they?

16 A. Yes, they are.

17 Q. So a facility that housed 2,000 head of
18 cattle, but had built those controls, had expended a
19 lot of money; is that correct?

20 A. Yes.

21 Q. So a facility that continued to house 2,000
22 head but hadn't put that investment into the facility
23 to build those controls, they would be operating at a
24 competitive advantage over the facilities that built
25 the controls; is that correct?

1 A. Yes.

2 Q. Thank you.

3 Again, focusing on the alternative
4 technology for a moment or two--

5 A. Yes.

6 Q. --how many facilities were ultimately
7 allowed to participate in the Iowa Cattlemen's plan
8 to experiment with the alt tech?

9 A. There was six in the experimental project,
10 but there was also the ability or possibility of
11 other feedlots to apply, to make application to have
12 a plan approved. There were six that were part of
13 the project that were co-funded with grant money from
14 EPA and NRCS and that type of thing.

15 Q. Were there a lot of facilities that wanted
16 to participate in the alternative technology?

17 A. There were a lot that wanted to originally,
18 yes.

19 Q. But they were aware only a few would be
20 accepted in the pilot program?

21 A. Yes, but the idea was that they were
22 interested because they--whether they got the
23 part--got the grant money and the monitoring money or
24 not, there was an option for them. They were looking
25 for a different--had a potential different option.

1 Q. Would you say that the majority of the
2 facilities that were hoping alt tech worked--

3 A. Yes.

4 Q. --ultimately weren't able to pursue it?

5 A. Yes, that's exactly right. By the time the
6 rules, regulations, and restrictions came down from
7 Iowa DNR, they were so burdensome that most people
8 decided not to pursue that route.

9 Q. And ultimately Mr. Vos decided not to pursue
10 that route?

11 A. That is right. We didn't know that, we
12 didn't know how the rules were going to come down,
13 actually, until September of '05 on the alternative
14 technology.

15 Q. You testified to House Bill 805?

16 A. Yes.

17 Q. That was passed in July of '05; is that
18 correct?

19 A. It went into effect July 1, '05. It was
20 passed by the legislature in March or April.

21 Q. One of the advantages of passage of House
22 Bill 805 is the facilities could move forward with
23 some of their controls if they decided they wanted
24 to?

25 A. What happened with 805 is they clarified the

1 rules for building all of the runoff control
2 structures.

3 Q. So is it safe to say if a facility wanted to
4 move forward on initiating the construction of their
5 controls after House Bill 805, they were given
6 permission to go ahead and move forward with some of
7 their controls? Not all of them, I recognize, but
8 some of those controls?

9 A. Yes. That was never publicized, but when
10 producers asked if they could do anything, then--and
11 I can't remember if that was right at the passage of
12 the bill, sometime during the summer, in September,
13 when all the rules were put into effect, and my
14 recollection is it was September when we looked at
15 the final rules, "Okay. Now what can we do, and what
16 can we not do?"

17 So it would have been about that timeframe,
18 late summer, before we were finally told, "Well, you
19 can go ahead and build some settling basins and clean
20 water diversions without having a permit."

21 Q. So you were informed that you could move
22 forward with some of the construction, then, about
23 September?

24 A. Yes.

25 Q. Did you let facilities know this?

1 A. Yes. If any facilities we were working
2 with, or anybody that asked, we let the engineers
3 know. But, again, as you approach September, we
4 could not find--your hands were tied. If you don't
5 know until September in this state that you have to
6 construct something outside, by the time you get a
7 contractor and get moving, you're well into November,
8 and weather will be a huge factor. We have to really
9 know no later than early summer if we're going to
10 plan for fall.

11 The dirt contractors really slowed a lot of
12 people up because when the fall hits and the crop
13 comes out, they do the terraces and the waterways
14 when all the 75 percent funded NRC money comes
15 through for runoff control structures, and you can't
16 get them to dig your basin or to do your settling
17 basin at that time, unless you've had them booked for
18 months.

19 So finding out in late summer basically
20 means that we're next year before we can construct.

21 Q. To your knowledge has any controls been
22 constructed at Mr. Vos' facility today?

23 A. I haven't been--I've been gone from the
24 Cattlemen's Association for almost two years and have
25 had no contact with him since. I guess we talked,

1 maybe, a couple times when we crossed paths at
2 meetings, but that's about all.

3 Q. Now, you testified quite a bit about the
4 controls that result--the control of runoff and
5 pollutants that occurs from settling structures. Do
6 you recall that testimony?

7 A. The--

8 Q. Solid settling structures?

9 A. Right.

10 Q. You testified that settles out 80 percent or
11 so--

12 A. 80-some percent of the solids if it's done
13 properly.

14 Q. Now, that doesn't remove suspended--or
15 dissolved solids, does it?

16 A. That's right, it did not.

17 Q. So dissolved pollutants go over the
18 sedimentation basin; is that correct?

19 A. Yes.

20 Q. And flows downhill to whatever stream may be
21 nearby?

22 A. Yes.

23 Q. You testified to some meetings you had with
24 Environmental Protection Agency, IDNR, there were a
25 number of meetings held to address the impending end

1 of the Iowa Plan; is that correct?

2 A. Just one.

3 Q. And when was that meeting?

4 A. March 10 of 2006.

5 Q. Do you recall the meeting in May of 2004
6 when the Iowa Cattlemen met with ICA and with IDNR to
7 discuss the Iowa Plan?

8 A. No, I don't, and I may not have been part of
9 that meeting because Carol Balvanz, who was handling
10 the environmental issues, left the Cattlemen's
11 Association September of '05, and that's when I got
12 more deeply involved, and that's when I prepared the
13 survey and we had the meeting with Mr. Gulliford from
14 EPA on March 10 of 2006.

15 Q. So you weren't present in July--excuse me--
16 at a May 6th, 2004, meeting?

17 A. No.

18 MR. BREEDLOVE: May I have a moment, Your
19 Honor?

20 THE ADMINISTRATIVE LAW JUDGE: Sure. We're
21 off the record.

22 (Discussion off the record.)

23 THE ADMINISTRATIVE LAW JUDGE: Back on the
24 record now.

25 MR. BREEDLOVE: Thank you, Your Honor. I

1 have no further questions. Thank you.

2 THE ADMINISTRATIVE LAW JUDGE: Okay.

3 Anything on redirect?

4 MR. McAFEE: Yes, Your Honor. Thank you.

5 REDIRECT EXAMINATION

6 BY MR. McAFEE:

7 Q. Mr. Vermeer, you--in response to some
8 questions from Mr. Breedlove, you talked about, I
9 believe, some feedlots who dropped below a thousand
10 head; is that correct?

11 A. Yes.

12 Q. And did those feedlots, as you can recall,
13 did those feedlots usually receive some sort of
14 notice from DNR that your options are to drop below a
15 thousand head or continue?

16 A. Yes. After the inspection, the letters went
17 out saying you can drop below a thousand head, or
18 whatever. There was a follow-up letter after the
19 initial inspection.

20 Q. Also you testified in response to some of
21 Mr. Breedlove's questions about the AT program, and
22 you used the term "pilot program," I believe?

23 A. Yes.

24 Q. Do you remember the purpose of the pilot
25 program?

1 A. The purpose of the pilot program was to cost
2 share some of the construction, but to have money to
3 collect a lot of data from these alternative
4 technology pilot sites so that we could potentially
5 validate that as a process that would meet federal
6 requirements of the Clean Water Act.

7 Q. At the same time, were there other feedlots
8 that were allowed to--once the rules were developed,
9 that were allowed to install alternative technology
10 systems?

11 A. Yes.

12 Q. And they were not pilot sites?

13 A. Right. As I said, most of the grant
14 money--a big share of the grant money was for the
15 monitoring for the pilot sites for potential
16 validation.

17 Q. So if I understood it correctly, once the
18 rules are in place, any feedlot that could meet those
19 rules could be using alternative technology?

20 A. Yes.

21 Q. And that goes beyond the pilot program?

22 A. Yes.

23 MR. McAFEE: I don't have any further
24 questions, Your Honor.

25 THE ADMINISTRATIVE LAW JUDGE: Thank you.

1 Anything else, Mr. Breedlove?

2 MR. BREEDLOVE: One second.

3 THE ADMINISTRATIVE LAW JUDGE: Sure.

4 RECROSS EXAMINATION

5 BY MR. BREEDLOVE:

6 Q. Just a couple more questions, Mr. Vermeer.
7 In regard to the pilot program did Mr. Vos ever
8 submit an application to be a part of that program?

9 A. No. As I recall, we didn't have the rules
10 out, and he had decided he couldn't wait at all for
11 those rules.

12 Q. So he never really gave any serious
13 consideration to alternative--

14 A. Oh, yes, he did, but he was under the
15 time--you know, and, still, in my opinion, is an
16 ideal potential site for alternative technology if it
17 validates to prove out, but he was under these
18 timetables. I can remember him telling me, "I can't
19 wait any longer for alternative technology rules.
20 I've got to move."

21 Q. So the other facilities that did apply for
22 the nonpilot alt tech, did they submit NPDES permit
23 applications?

24 A. Yes, if they did that, that's right, under
25 the rules. But they did not submit until after the

1 rules were written, September of '05.

2 MR. BREEDLOVE: Thank you.

3 Your Honor, I have no further questions,

4 Your Honor.

5 MR. McAFEE: No further questions here, Your
6 Honor.

7 THE ADMINISTRATIVE LAW JUDGE: Okay. Thank
8 you, sir. We appreciate your testimony. You're
9 excused.

10 (Witness excused.)

11 THE ADMINISTRATIVE LAW JUDGE: Okay. Are
12 you ready to go? Is this witness going to be a short
13 witness?

14 MR. McAFEE: This next witness--

15 THE ADMINISTRATIVE LAW JUDGE: Off the
16 record, sure. Off the record.

17 (Discussion off the record.)

18 THE ADMINISTRATIVE LAW JUDGE: Let's go back
19 on the record.

20 MR. McAFEE: I'm ready to call the next
21 witness, Your Honor, Carol Balvanz.

22 MR. BREEDLOVE: Your Honor, EPA would like
23 to raise an objection to the testimony of Carol
24 Balvanz on relevance. Based on the prehearing
25 exchange, the information she's going to testify to

1 is events leading up to that Iowa Plan. That Iowa
2 Plan was documented and memorialized in one of
3 Complainant's exhibits. That would be--excuse me--
4 Respondent's Exhibit 3. And so we've already had one
5 witness testify to the Iowa Plan, and really the
6 events leading up to it and the creation of the Iowa
7 Plan really aren't relevant to the proceedings we
8 have here today.

9 THE ADMINISTRATIVE LAW JUDGE: Okay. Now
10 I'll hear from Mr. McAfee.

11 MR. McAFEE: Your Honor, I think
12 Ms. Balvanz' testimony is going to be shorter than
13 Mr. Vermeer's, and I don't intend to present the same
14 thing, but Evan Vermeer was not at the Iowa
15 Cattlemen's Association when the Iowa Plan was
16 started.

17 Maybe I didn't use the exact word--I would
18 have to look at my summary in the prehearing
19 exchange. What Ms. Balvanz will testify to is really
20 that period of time when it was first implemented,
21 leading up to it. And there is an exhibit we have,
22 Exhibit 2, which is a letter to EPA explaining what
23 the Iowa Plan--with the Iowa Plan attached. It's
24 dated March 22nd, 2001. And Ms. Balvanz was very
25 instrumental in that letter. And this, again, is an

1 exhibit that--in this case, and she's cc'd on the
2 letter. And I think primarily what her testimony
3 will involve is everybody's understanding about these
4 real world limitations that DNR--what Gene Tinker has
5 talked about, et cetera. That's what testimony she
6 will present.

7 THE ADMINISTRATIVE LAW JUDGE: Okay. Having
8 heard from both sides, I will allow the testimony of
9 Respondent's next witness, so if you can call her.

10 MR. McAFEE: Go right up there to the
11 witness stand, please.

12 THE ADMINISTRATIVE LAW JUDGE: Good
13 afternoon, at this point.

14 MS. BALVANZ: Hello.

15 THE ADMINISTRATIVE LAW JUDGE: Please raise
16 your right hand.

17 CAROL BALVANZ,
18 called as a witness by the Respondent, being first
19 duly sworn by the Administrative Law Judge, was
20 examined and testified as follows:

21 THE ADMINISTRATIVE LAW JUDGE: Just--unless
22 you've testified before, you wouldn't know this, we
23 want you to state your name and spell it for us,
24 please.

25 THE WITNESS: Carol Balvanz. C-a-r-o-l; B,

1 as in boy, a-l-v, as in Victor, a-n-z, as in zebra.

2 DIRECT EXAMINATION

3 BY MR. McAFEE:

4 Q. Carol, could you please state your
5 name--excuse me. You stated your name. Please state
6 your address.

7 A. I live at 24073 Highway S33 north of
8 Hubbard, Iowa, in Hardin County.

9 Q. What is your current place of employment?

10 A. I'm employed by the Iowa Soybean
11 Association.

12 Q. Previous to--I'm sorry. How long have you
13 been with the Iowa Soybean Association?

14 A. Since October of 2005.

15 Q. And where were you employed prior to that?

16 A. The Iowa Cattlemen's Association.

17 Q. And how long were you there?

18 A. I believe 18 years. I started in June of
19 1987.

20 Q. And you have some off-farm--not off-farm.
21 You have some off-job employment; is that right?

22 A. Well, my husband and I also own--we rent a
23 small farm, we rent out our farm ground. But we have
24 80 head of commercial stock cows, we run a 500-head
25 hog nursery, we have about 20 sheep, assorted pigs,

1 chickens, goats, those kinds of things, on our farm
2 in Hardin County.

3 Q. Ms. Balvanz, were you employed by the Iowa
4 Cattlemen's Association at the time the Iowa Plan was
5 being discussed?

6 A. Yes, I was.

7 Q. And just briefly for the Court, could you
8 tell us what brought the Iowa Plan about?

9 A. Back in about 1998 I had received a call
10 from Ubbo Agena, who worked for the Iowa DNR. And
11 Ubbo was concerned. He had worked with one of my
12 co-workers and mentors, Maynard Jayne, who had worked
13 for the Cattlemen's Association for a number of years
14 and did work with me as well. Ubbo was concerned
15 that there were changes coming about with feedlots,
16 and he wanted some help, actually, in taking a tour
17 of western Iowa with some EPA people. They were
18 hydrologists, I'm sure.

19 I did not know the people very well, but
20 Ubbo assured me that this would not be a punitive
21 visit, this would simply be a visit where they could
22 take a look at some Iowa feedlots and I could choose
23 the ones that I wanted.

24 I did choose three feedlots in western Iowa
25 on a very, very rainy day, I believe it was in April.

1 I met them in Omaha and took a van tour to these
2 three feedlots, and we talked about situations that
3 were in place on the feedlots. Some of them did have
4 basins, some of them did not. All of them were
5 settling solids and trying to do a good job as they
6 knew to do a good job. And we did spend a lot of
7 time up at one feedlot up in Sac County where he
8 actually explained his whole nutrient management
9 system that was done by GPS, and the EPA--I think the
10 people learned a lot there.

11 Following that meeting I was assured by
12 EPA--in fact, prior to the meeting I had received
13 assurances by EPA that they would not punish anyone
14 on that tour, any feedlot on that visit for seeing
15 something, seeing some discharge, or some type of
16 issue. So we were happy to comply and work with it.

17 In about 1999, however, we did get word from
18 a few feedlots, calls, that there were in fact EPA
19 inspectors in the state, they were inspecting feedlots,
20 they were permanent feedlots that were being visited,
21 and that there were some large fines being levied at
22 producers who apparently were not meeting EPA
23 standards. ICA did get some calls on those
24 feedlots--from those feedlots. We were not able to
25 help them very much, and most of them, I think,

1 settled their fines. But we saw the 1999 visits as
2 somewhat of a wake-up call that things will probably
3 change.

4 Now, we had a lot of conversations over the
5 years, that--in 1972, in fact, the Clean Water Act
6 was passed, and that within 1972, during that time,
7 certain feedlot rules were put in place that said
8 that, you know, you had to settle solids, but you
9 also were supposed to hold all the rainfall that fell
10 on an open feedlot. And yet throughout the years
11 Iowa DNR had allowed, I guess, a more lax set of
12 rules to apply.

13 It wasn't until probably in about 2002 when
14 I actually got to meet with a gentleman who helped
15 write the clean--the rules and the model for the
16 Clean Water Act back in 1972, a Dr. James Koelliker
17 from K State, and we were having a meeting and I got
18 to talk to the gentlemen. And I said, "Sir, explain
19 to me how you and why you created this model that
20 required a feedlot to hold all of the water that
21 falls onto it?" And he chuckled at me and said,
22 "Well, actually, Carol, I'm from K State, and
23 actually creating a model like that, we knew we would
24 be eliminating Iowa from large feedlots because there
25 was no way that they, given the model, they could

1 build a basin large enough and maintain it in order
2 to comply."

3 Q. So these discussions, then--I just wanted
4 to--I kind of wanted to move into the Iowa Plan.

5 A. Sure.

6 Q. Does that give a pretty good background as
7 to what happened and why the Iowa Cattlemen's
8 Association pursued the Iowa Plan?

9 A. Following the visits in 1999, we decided
10 that it was time to sit down with DNR, and we
11 actually did hold a meeting I believe in Lamoni with
12 the Region 7 administrator to talk about, "Okay, what
13 can we do? DNR admits that they have not followed
14 what was prescribed by EPA. We've got a number of
15 feedlots out there that probably need some help.
16 What can we do to make this happen?"

17 And after two meetings in Lamoni with, I
18 believe it was Mr. Yurgrams (phonetic) from EPA Region 7
19 at that point, we decided that we would sit down,
20 DNR, a number of other groups, with the Iowa Cattlemen's
21 Association, and we would create a plan to come into
22 compliance within a reasonable amount of time.

23 Q. You have an exhibit book there in front of
24 you, Ms. Balvanz, with the green cover. It's the
25 smaller of the notebooks, and those are Respondent's

1 exhibits. And I'd like you to turn to tab 2, and
2 we'll also look at tab 3.

3 But, first of all, let's go to tab 3. I'm
4 not going to have you talk about this right now, but
5 is that the Iowa Plan?

6 A. Yes, it is.

7 Q. And then back to tab 2. What is that?

8 A. We had worked for several months to put
9 together the Iowa Plan, and when we finally got it
10 put together, we did send it, along with this letter,
11 to Gale Hutton, who had also been involved in our
12 discussions, and asked him to take a look. And this
13 is what we had come up with, basically, at the
14 request of those meetings held in Lamoni, and we had
15 hoped that as we moved forward, this would serve as a
16 framework so that we could work together and, you
17 know, work with the feedlots down the road.

18 Q. Let's go to--and I've called it tab 2. It's
19 Respondent's Exhibit 2. And you're there now. What
20 letter--what's the date on that letter?

21 A. March 22nd, 2001.

22 Q. And there's a paragraph in that letter I'd
23 like to have you read, and I'll direct you to it.
24 It's right below the bullet points.

25 A. Uh-huh.

1 Q. If you would read it slowly for our court
2 reporter, please. Would you read that into the
3 record?

4 A. "This plan has the goal of bringing open
5 feedlots into compliance within five years, yet
6 recognizes the real-world limitations of staffing and
7 time for the DNR, time and money for cattlemen, and
8 infrastructure problems with existing engineering,
9 cost-share and contractors."

10 Q. Now, this letter with this paragraph that
11 you have just read was sent to EPA; is that correct?

12 A. That's correct.

13 Q. What was the--I assume you had some role in
14 this letter because it was a joint letter between the
15 Iowa Cattlemen and Iowa DNR; is that right?

16 A. That's correct.

17 Q. But both IDNR and Iowa Cattlemen agreed to
18 the contents of this letter; right?

19 A. Yes.

20 Q. Did you ever hear back from EPA regarding
21 this letter?

22 A. I don't have a--I don't recall the exact
23 copy. I know we did hear back. I know in the
24 ensuing months, one of the requests that we had of
25 EPA, which is listed in the bullet points, was that

1 we had requested that during this registration
2 period, that feedlots be given some time to work
3 through the process, and that if a feedlot was
4 willing to come forward and register, that EPA would
5 say, "Okay, you're in the program. We'll allow you
6 the time to work through."

7 I do recall receiving a call from Gale
8 Hutton, I believe it was in July of that year,
9 telling me that in fact there might be inspectors
10 coming back into Iowa, but that at that time he would
11 agree to not inspect feedlots that had registered.

12 Q. After the Iowa Plan went into effect--and
13 maybe turn now to page--excuse me--tab 3, which is
14 Respondent's Exhibit 3, and I believe the document
15 gives the effective date. Do you see that there?

16 A. March 22nd, 2001.

17 Q. What was your understanding after--and this
18 is when the plan goes into effect, so what was your
19 understanding for feedlots that had registered for
20 the--what would be their status for inspections for
21 the remainder of the Iowa Plan?

22 A. Well, the agreement was, at least with Iowa
23 DNR, and we assumed with EPA, that as long as people
24 were making progress towards compliance, if they'd
25 registered, that they would be not inspected, or not,

1 at least, fined for violations. DNR had long-held a
2 situation that, you know, they would inspect
3 complaints, but that the only issuance of any sort of
4 punitive damages would be if there was a documented
5 water quality violation in that time, or a fish kill.

6 Q. Was that--and you were with the Iowa
7 Cattlemen until when?

8 A. Until September 30th of 2005.

9 Q. So the Iowa Plan wasn't over yet, the
10 five-year period when you left, but you were there
11 for approximately four-and-a-half years of it; right?

12 A. Yes.

13 Q. Was that your experience, that EPA did not
14 conduct inspections of a feedlot that was still in
15 the Iowa Plan?

16 A. I don't recall getting phone calls from
17 anyone who had registered saying "EPA is here to
18 inspect me and you said they wouldn't be."

19 Q. I want to move now to--well, I want to back
20 up just a second to Respondent's Exhibit 2 and the
21 paragraph I had you read. Do you see that?

22 A. Yes.

23 Q. And the word "goal," I think that the
24 paragraph uses the word "This plan has the goal of
25 bringing open feedlots into compliance within five

1 years." Was that particular phrase there, the goal
2 within five years, was that discussed a lot?

3 A. Very much, yes, and that seemed to be an
4 issue not only for the cattlemen, but also for Iowa
5 DNR, that there were many, many extenuating
6 circumstances that would make it very difficult to
7 set a date or time certain; therefore, the goal was,
8 and we mitigated that goal by saying if you continued
9 to make progress, that you would be considered in
10 good standing and working toward your end of coming
11 into compliance.

12 Q. And could you now turn to Respondent's
13 Exhibit 3, and please turn to page 3 of that exhibit,
14 and at the bottom there's a paragraph 4. Do you see
15 that?

16 A. Yes, I do.

17 Q. And there's a sentence that starts there on
18 that page right at the end. Could you read that on
19 over to the next page, please?

20 A. "The goal of the department will be to have
21 all high priority facilities on a compliance schedule
22 within two years, and to have all facilities in
23 compliance within five years."

24 Q. And was that--what does that--does that
25 paragraph coincide with what, in your mind, anyway,

1 with what was in the letter?

2 A. The first letter?

3 Q. Yes.

4 A. I believe so. I think it was a goal.

5 Q. All right. Now I want to turn to an issue
6 that's been discussed in these proceedings, the
7 legislation in Iowa. It's been called 805, and
8 various--I think technically it's House File 805,
9 which is a number assigned to it by the legislature.
10 Is that your understanding?

11 A. Yes.

12 Q. Did you work on that legislation?

13 A. Yes.

14 Q. Do you remember--of course, what did the
15 legislation do?

16 A. As I recall, shortly after developing the
17 Iowa Plan, we set about with DNR at their request to
18 try to construct a type of general permit, and we
19 started looking at a general permit which would,
20 obviously, speed up the process, if we could get
21 general permits out there for a number of feedlots.

22 However, when we got looking at it, it was
23 very hard to write a general permit because there
24 were really no construction standards for effluent
25 basins. All that we had were construction standards

1 for basins that were being used to hold confinement
2 manure from hog units. And the effluent coming from
3 an open feedlot, which is primarily rainfall with
4 some residue of manure mixed in, was a very different
5 product from that being held by a hog confinement
6 lagoon.

7 Constructing hog confinement lagoons
8 requires much, much more compaction and different
9 standards, and we felt that would be an extra cost
10 factor, and the DNR agreed. They felt that having
11 fewer costs and making these a little bit easier to
12 construct would still be effective.

13 One of the issues was that the only Iowa law
14 that governs this, and the rules that were out there
15 simply had construction standards for confinement
16 basins. Therefore, we needed to go in and get some
17 definitions created for an effluent--a settled
18 effluent basin which would be something where the
19 solids had been settled out prior, and the liquid,
20 which was devoid of its manure solids, would then be
21 held in this basin, and what those standards might
22 be, and that was the intent of 805, was to create
23 that space in law for that to happen.

24 Q. Did House File 805 also address alternative
25 technology systems?

1 A. Yes, it did, and alternative technologies
2 are--it's kind of an interesting issue. We had
3 worked quite extensively not only with DNR, but EPA
4 in Washington, D.C., and in Kansas City, to try to
5 look at a different way. If Mr. Koelliker--
6 Dr. Koelliker's notion was correct, that these basins
7 were very, very large and expensive. It would seem
8 that there might be another method of allowing the
9 effluent to flow over ground, infiltrate in, use some
10 very shallow tile drainage to pull the effluent
11 through the ground, obviously filtering it somewhat,
12 pull it back up, send it through some sort of forage
13 base so that it would have the opportunity then to
14 volatilize or utilize the nitrogen in the forage
15 base. So those alternative technologies were spoken
16 to in the law.

17 Q. Now, when did this law go into effect, do
18 you remember?

19 A. I believe it was--we worked on it in 2002.
20 I believe 2003.

21 Q. Do you remember when the rules went into
22 effect on House File 805, to implement that?

23 A. Probably not until 2004. I don't know.
24 It's been a long time.

25 Q. Okay. I understand.

1 MR. McAFEE: I have no further questions,
2 Your Honor.

3 THE ADMINISTRATIVE LAW JUDGE: Okay. Cross?
4 How long could it be?

5 MR. BREEDLOVE: Not very long, Your Honor.

6 THE ADMINISTRATIVE LAW JUDGE: Go ahead.

7 CROSS-EXAMINATION

8 BY MR. BREEDLOVE:

9 Q. Ms. Balvanz, I'm Dan Breedlove with EPA.

10 A. Certainly.

11 Q. I just have a few questions for you. I
12 would like to focus your attention very briefly on
13 Respondent's Exhibit 3, the Iowa Plan document that
14 you testified to.

15 A. Okay.

16 Q. I guess the first question I have for you is
17 the document contains deadlines, does it not? Five
18 years, the existence of the Iowa Plan is five years
19 long; is that correct?

20 A. The document states in several places the
21 goal of it would be to have feedlots in compliance
22 within five years.

23 Q. Now I'd like to focus your attention on page
24 3, paragraph 2. Have you found that?

25 A. Uh-huh.

1 Q. Okay. It says on the very last--could you
2 read the very last sentence in that subparagraph to
3 me--to the Court, please?

4 A. Prior to the A, B, C?

5 Q. Yes, ma'am.

6 A. "The producer will not be subject to
7 penalties due to this, provided that."

8 Q. Now, if you could go to subparagraph C below
9 there and read that into the record.

10 A. "The producer must maintain reasonable
11 progress towards compliance as discussed Sections 4
12 through 7 below."

13 Q. Okay. Now, paragraph 6 on the next page,
14 would you please read that to us as well?

15 A. "The provisions of paragraph 2 will apply so
16 long as the facility operator is cooperating with the
17 department to achieve compliance within a reasonable
18 time."

19 Q. So the Iowa Plan provided some amnesty; is
20 that correct?

21 A. I believe it did.

22 Q. Now, that wasn't unconditional, though, was
23 it?

24 A. No, it wasn't unconditional. The conditions
25 are--were negotiated and spelled out.

1 Q. In fact, the conditions to receive that
2 amnesty, as you read to us in subparagraph C on page
3 3, is that there needs to be reasonable progress
4 toward compliance; is that correct?

5 A. Yes.

6 Q. Are you very familiar with the compliance
7 history at Mr. Vos' facility?

8 A. I'm not.

9 Q. Now, let me ask you this: A facility was
10 six months late in submitting its engineer's name to
11 IDNR, now, would that be reasonable progress?

12 A. There were many engineers that were not
13 available or--it was very difficult to find an
14 engineer because Iowa wasn't doing much feedlot work
15 prior to this. So finding an engineer--and then
16 after the Iowa Plan came in and there was many, many
17 people needing an engineer, it was difficult to find
18 one.

19 Q. To follow that, there were a number of
20 facilities within the Iowa Plan that were able to
21 meet those deadlines, weren't there, able to provide
22 the--their engineer on time?

23 A. There were. However, I'm not sure what
24 their schedule was in terms of receiving their
25 assessment from DNR and knowing what they had to do.

1 Q. So I'll just ask the question in maybe a
2 little different way: In evaluating reasonable
3 progress, is six months delay in submitting the
4 engineer's name reasonable? Yes or no?

5 A. I think we would have told--had he called
6 me, I would have told him "Do as much as you can as
7 fast as you can."

8 Q. If he had not called you or called IDNR to
9 inform them of the delay, would that be reasonable
10 progress?

11 A. I'm not sure what he was doing there. He
12 may have had NRCS's assistance.

13 Q. Just hypothetically.

14 A. Hypothetically, I think given where a lot of
15 people went with the Iowa Plan, yes, it was
16 reasonable progress.

17 Q. Following on the six-month delay in
18 submitting the engineer's name, would a four-month
19 delay--at least a four-month delay in submitting the
20 plan of action to IDNR, would that also be reasonable
21 progress?

22 A. DNR had a role in developing those plans of
23 action, so depending on how much they delayed him.

24 Q. You're saying that IDNR had a role in
25 developing the POA?

1 A. They had to assess and tell him what he had
2 to create and do, and then to meet with the engineer,
3 figure it out, and sometimes those plans of action
4 were returned.

5 Q. Were you part of the development of this
6 plan?

7 A. Of--

8 Q. The Iowa Plan.

9 A. Yes.

10 Q. So the first step was the on-site--in-house
11 assessment; is that correct?

12 A. In-house assessment, that's correct.

13 Q. Assigned a priority to the facility?

14 A. Yes.

15 Q. Based on priority, that's when the on-site
16 assessment occurred?

17 A. Sometime after the priority was set. The
18 on-site did not occur for months.

19 Q. Did part of the Iowa Plan also establish
20 that the high priority facilities would be visited
21 first?

22 A. Yes.

23 Q. Medium second?

24 A. Yes.

25 Q. And low priorities following that?

1 A. Yes.

2 Q. The purpose of the on-site assessment, was
3 that to evaluate the facility's priority that was
4 assigned to that facility?

5 A. I think it did in some cases where they came
6 on-site, and I think there were some that appeared to
7 be high priority off-site who once they were visited
8 became medium priority.

9 Q. For any facility, once they received that
10 on-site assessment, that's when they were given the
11 deadlines by which to submit their engineer's name;
12 is that correct?

13 A. I'm not sure it was stated as a deadline.
14 It was stated, again, as a goal, "You need to get
15 your engineer."

16 Q. So part of that on-site assessment was to
17 provide a time line, a goal, if you will, to provide
18 the name of the engineer to IDNR?

19 A. Uh-huh.

20 Q. Also to provide a plan of action to IDNR; is
21 that correct?

22 A. Yes--well, the engineer would have to come
23 first because the engineer would assist in writing
24 the plan of action.

25 Q. It's the engineer that assists in writing

1 the plan of action?

2 A. Yes.

3 Q. Not IDNR; is that correct?

4 A. Yes.

5 Q. So the date of the plan of action, was that
6 six months following the on-site assessment? The
7 deadline for providing the plan of action to IDNR,
8 was that six months following?

9 A. I don't know the deadlines. I think it was
10 different in every case.

11 Q. You were part of the development of that
12 plan; is that correct?

13 A. Yes. I don't see in the plan where we put
14 those hard and fast deadlines.

15 Q. So the next question for you, then, is part
16 of that plan of action, was that--the plan of action
17 provided time lines by which the facility would need
18 compliance, provide final plans?

19 A. It attempted to, but in the real world,
20 knowing that engineers get lots of projects and get
21 busy, it didn't always follow.

22 Q. So if a facility was roughly seven months
23 late in filing its plan of action, is that still
24 reasonable progress?

25 A. Were we still underneath the time frame?

1 Q. If a facility was issued a notice of
2 violation, stated imminent termination from the Iowa
3 Plan, provided an extra 30 days to come into
4 compliance, but still didn't file the final plans for
5 an additional seven months, is that still reasonable
6 progress?

7 A. I think given where a lot of the feedlots
8 came in in the Iowa Plan, yes, it was. And I say
9 that because DNR was very, very slow in providing
10 first the initial assessments, and then the on-sites,
11 and what it lent itself to was producers starting to
12 say "Well, if DNR is going to take three to four to
13 five to eight to maybe more months to respond to me,
14 you know, it's very difficult for me to move
15 quickly."

16 The other thing you've got to take into
17 consideration here, and I know--we purposely did not
18 write hard and fast deadlines in here, but these are
19 farmers, they are not environmental consultants for a
20 feedlot, and they are in the midst of spring planting
21 and fall harvest and developing feed. And so, yes,
22 are they always conscious "By next Tuesday I have to
23 have this plan in?" Probably not because they have
24 lots of demands on their time.

25 So I guess I would say that this was

1 something new for Iowa feedlot owners and feedlots to
2 go through, and we tried to make it as flexible as we
3 could, working with the DNR, working with NRCS,
4 trying to bring engineers in that would understand
5 what we had to do, and trying to help producers who,
6 quite frankly, were in fear of going out of business
7 work through the process.

8 Q. So for the sake of argument here, say IDNR
9 had timely done the on-site assessment, had timely
10 evaluated the plan of action and responded. A
11 facility that then failed to meet each and every goal
12 set out by the Iowa Plan to the point where it was
13 actually kicked out of the plan, would you say that
14 was reasonable progress with the Iowa Plan?

15 A. I think that probably happened a lot.

16 THE ADMINISTRATIVE LAW JUDGE: I think that
17 probably happened what?

18 THE WITNESS: Happened a lot.

19 THE ADMINISTRATIVE LAW JUDGE: I didn't hear
20 your answer.

21 THE WITNESS: I apologize.

22 BY MR. BREEDLOVE:

23 Q. Now, you testified regarding communications
24 with the Environmental Protection Agency about the
25 formation of the Iowa Plan.

1 A. Yes.

2 Q. Can you recall EPA's response when
3 Complainant's Exhibit 2, that letter--excuse me--
4 Respondent's Exhibit 2, my apologies. Do you recall
5 EPA's response to Iowa Cattlemen's and IDNR's
6 submission of this to EPA?

7 A. I don't believe I received a written
8 response. I did have some phone call discussions
9 about the letter.

10 Q. Was there anytime that EPA clarified to you
11 what its position was in regard to the Iowa Plan?

12 A. EPA largely was congratulatory that we had
13 in fact reached agreement, and they were willing to
14 talk about it.

15 As I said, I did have a communication with
16 Gale Hutton in July of that year when he basically
17 said, "Yes, we're probably going to come back into
18 Iowa and start visiting feedlots, but we will not
19 visit those registered feedlots." By then we had
20 something over 900 feedlots registered. He felt that
21 was good progress. And by December I think we have
22 over 1,500 feedlots registered.

23 Q. Now, did that--the praise, what you were
24 mentioning from EPA, did that continue all the way
25 through the Iowa Plan?

1 A. As long as I was affiliated with it, yes.

2 Q. And when did you leave?

3 A. I left in September of '05.

4 Q. September of '05. Did you have a meeting
5 with EPA and IDNR in May of 2004?

6 A. That I can't recall unless you tell me who
7 the participants were.

8 Q. That meeting would have included Leo
9 Alderman, the division director of the water division
10 at that point in time.

11 A. I do remember Leo, yes. I don't know if I
12 was at that meeting, but I probably was.

13 Q. Do you recall receiving a correspondence
14 from EPA after a May 6th meeting?

15 A. No, I do not.

16 MR. BREEDLOVE: May I approach, Your Honor?

17 THE ADMINISTRATIVE LAW JUDGE: Yes. Thank
18 you. You intend to introduce this, or just for now
19 are you going to give it a number for identification
20 purposes?

21 MR. BREEDLOVE: We can go ahead and identify
22 it for identification purposes. That would be
23 Complainant's Exhibit 58.

24 THE ADMINISTRATIVE LAW JUDGE: Okay.
25

1 BY MR. BREEDLOVE:

2 Q. Do you recognize this letter, Ms. Balvanz?

3 A. It obviously was written to me.

4 Q. That wasn't my question. Do you recognize
5 it?

6 A. I don't recognize it. I don't remember it,
7 but I've been away for a while.

8 THE ADMINISTRATIVE LAW JUDGE: Let me just
9 be fair to this witness. Mr. Balvanz, would you like
10 to take a minute, before you answer questions about
11 the letter, to read this two-page letter?

12 THE WITNESS: I would, certainly. Thank
13 you.

14 THE ADMINISTRATIVE LAW JUDGE: Let me ask
15 you, before you start to read it, and we'll go off
16 the record for a minute to allow you to do that, if
17 you look at page 2, on my copy, at least, obviously
18 an original was highlighted, but I can still read the
19 paragraph beginning "finally." Can you read that on
20 yours?

21 THE WITNESS: I can.

22 THE ADMINISTRATIVE LAW JUDGE: You can?

23 THE WITNESS: Yes.

24 THE ADMINISTRATIVE LAW JUDGE: Let's go off
25 the record, and when you're done, you can signal to

1 me that you had an opportunity to read it.

2 We'll go off the record.

3 (Discussion off the record.)

4 THE ADMINISTRATIVE LAW JUDGE: Let's go back
5 on the record.

6 BY MR. BREEDLOVE:

7 Q. Ms. Balvanz, did this jog your memory? Do
8 you recognize the letter?

9 A. I do recognize the letter now.

10 Q. Would you please summarize the contents for
11 the Court.

12 A. The letter reaffirms the value that EPA saw
13 in the Iowa Plan for open feedlots. It does say that
14 EPA expected people to be within compliance, the
15 five-year compliance deadline to be a firm one, and
16 that they were hopeful that things would work out.

17 Q. Thank you, Ms. Balvanz. I'd like to just
18 focus your attention on the final paragraph of the
19 second page, the final full paragraph.

20 Having looked at this document, do you
21 believe it was EPA's position that facilities were
22 not expected--let me rephrase that.

23 MR. BREEDLOVE: I'm sorry, Your Honor.

24 BY MR. BREEDLOVE:

25 Q. I'd like to focus your attention on the

1 second sentence of the second to last paragraph on
2 page 2. Could you please read that sentence into the
3 record?

4 A. The second sentence in the second paragraph?

5 THE ADMINISTRATIVE LAW JUDGE: How about
6 starting the first few words, Mr. Breedlove. The one
7 that says "If at any time?"

8 MR. BREEDLOVE: "If at any time," that's
9 correct, Your Honor.

10 THE ADMINISTRATIVE LAW JUDGE: Can you find
11 that? It's in the highlighted section.

12 A. "If at any time a facility misses a deadline
13 or fails to comply with a requirement set by IDNR
14 under the program, EPA may immediately initiate
15 inspection and/or enforcement action against that
16 facility for noncompliance with the Clean Water Act."

17 MR. BREEDLOVE: Thank you.

18 One moment, Your Honor.

19 Your Honor, I'd like to move Complainant's
20 Exhibit 58 be put into evidence.

21 MR. McAFEE: No objection, Your Honor.

22 THE ADMINISTRATIVE LAW JUDGE: Complainant's
23 Exhibit 58 is admitted.

24 (Complainant's Exhibit 58 was
25 received in evidence.)

1 MR. BREEDLOVE: I have no further questions,
2 Your Honor.

3 THE ADMINISTRATIVE LAW JUDGE: Do you have
4 any redirect, Mr. McAfee?

5 MR. McAFEE: No, I do not, Your Honor.

6 THE ADMINISTRATIVE LAW JUDGE: Ms. Balvanz,
7 thank you for your testimony.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 THE ADMINISTRATIVE LAW JUDGE: Now we're
11 going to go off the record.

12 (Recess at 1:25 p.m., until 2:30 p.m.)

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AFTERNOON SESSION (2:30 p.m.)

THE ADMINISTRATIVE LAW JUDGE: Mr. Vos.

LOWELL VOS,

called as a witness on his own behalf, being first
duly sworn by the Administrative Law Judge, was
examined and testified as follows:

THE ADMINISTRATIVE LAW JUDGE: Keep your
voice up now.

THE WITNESS: Okay.

THE ADMINISTRATIVE LAW JUDGE: You don't
have to spell your name, but just state your name for
the record.

THE WITNESS: Lowell Vos, one S.

THE ADMINISTRATIVE LAW JUDGE: Okay. Has it
been spelled with two Ses before?

MR. VOS: Most of them do.

THE ADMINISTRATIVE LAW JUDGE: Most Voses
you mean?

THE WITNESS: I would say 99 percent of
them, that's why--that's a habit, "V-o-s, one S."

THE ADMINISTRATIVE LAW JUDGE: I can relate
to that because in my lifetime, about 90 percent of
the people say, "Hello, Mr. Moran," a few say
something else. But for some reason instead of a-n,
they say it as if it ends i-n. I have been told that

1 in Ireland that that is the customary way of
2 expressing the name, even though it's r-a-n.
3 Whatever. So I can relate to your problem.

4 All right. Go ahead, Mr. McAfee.

5 DIRECT EXAMINATION

6 BY MR. McAFEE:

7 Q. Good afternoon, Mr. Vos. And so finally
8 it's your turn.

9 A. This is it. I'm the last one.

10 Q. Okay. I don't know that we need to go
11 through a lot of preliminaries here. I think a lot
12 of the information regarding you and your feedlot and
13 your farming business are probably already in the
14 record. But could you tell us how long you've been
15 feeding cattle?

16 A. Thirty-some years.

17 Q. And how long have you had a feedlot at the
18 location where your feedlot is now?

19 A. Thirty-some years.

20 Q. So you've always had a feedlot there?

21 A. Yes.

22 Q. Did you start the feedlot there?

23 A. No.

24 Q. Who started it?

25 A. My father.

1 Q. And how long was it there when your father
2 operated it, do you know?

3 A. It started in 1955. At that time it was on
4 both sides of the road.

5 THE ADMINISTRATIVE LAW JUDGE: On both sides
6 of what, sir?

7 THE WITNESS: The road.

8 BY MR. McAFEE:

9 Q. And were you helping him at that time?

10 A. Yes.

11 Q. When did you take over the feedlot?

12 A. I got married in 1968, and at that time my
13 older brother was also working with him. We were
14 together with our father. And slowly my father
15 retired, and he passed away. And then my brother and
16 I, we had families growing up, boys coming in, making
17 room for everybody. My brother and I split up also.
18 So are you asking when I was by myself?

19 Q. We'll just go through all this, Mr. Vos.
20 Let's talk about when you started on your own, then.
21 I use the word "started." You'd been at it a long
22 time, but when you began operating the feedlot
23 without your father or your brother involved, as near
24 as you can remember.

25 A. Probably in the early eighties.

1 Q. And do you remember about how many head you
2 had at that time in the--in this feedlot on this side
3 of the road?

4 A. Three or four hundred.

5 Q. Mr. Vos, let's get right into the exhibits
6 and work our way through this.

7 MR. McAFEE: May I approach, Your Honor?

8 THE ADMINISTRATIVE LAW JUDGE: Yes, you may.

9 BY MR. McAFEE:

10 Q. Mr. Vos, I'd ask that you return to
11 Complainant's Exhibit 9. What's the date on this
12 letter that you see on Exhibit 9?

13 A. August 19, 1991.

14 Q. Now, that gives us a date there to kind of
15 start with. You just testified that you operated the
16 feedlot, started on your own, sometime in the
17 eighties; is that right?

18 A. Yes.

19 Q. And what happened, then, in--this document
20 is dated August 19th of '91. What does this document
21 represent?

22 A. It says here that I received a construction
23 and an operation permit.

24 Q. So I take it, then, you didn't have one
25 before then; is that correct?

1 A. Correct.

2 Q. Why didn't you?

3 A. Didn't have to.

4 Q. What made you decide in 1991 to apply for
5 one?

6 A. At that time I wanted to enlarge a little
7 bit, and even though I was not out of compliance, I
8 just wanted to be safe.

9 Q. And did you own the land where the feedlot
10 was?

11 A. No, I did not.

12 Q. Who owned that land?

13 A. A family by the name of Rosenstock. It was
14 a mother and two sons, Myrtle Rosenstock, Jeff
15 Rosenstock, Steve Rosenstock.

16 Q. So you'd been operating a feedlot on rented
17 land; is that right?

18 A. That is correct.

19 Q. At the time you applied for this
20 permit--now, this date is when you received it, but
21 at the time you applied--well, let me ask it this
22 way: Why would you apply for a permit on land you
23 didn't own?

24 A. I had talked to them a little bit earlier
25 and hinted around about maybe if they would sell that

1 land, and they said they would, and they had other
2 land, too, but we thought we could get together. So
3 I was confident that I would be able to buy the land.

4 Q. So what did you do then regarding getting a
5 permit?

6 A. In getting the permit, or after I got the
7 permit?

8 Q. No, the process in getting the permit. Did
9 you--

10 A. I contacted an engineer by the name of--I
11 think it's Kuehl and Payer in Storm Lake, Iowa.

12 Q. I believe that name is at the bottom of the
13 first page of Exhibit 9. Would that be who--

14 A. Yes, it is.

15 Q. So you contacted them to prepare design
16 plans for you?

17 A. Yes.

18 Q. Do you remember what it cost to have them
19 prepare those?

20 A. Yes, I do.

21 Q. How much?

22 A. \$5,000.

23 Q. So you spend your \$5,000, you get the
24 permits, and then what happens?

25 A. I talked to my landowners more, and they

1 kind of backed out, they didn't want to sell it. At
2 that point I'm not out of compliance. I wasn't very
3 crazy about spending money on structures and basins
4 and whatever it took on rented land.

5 Q. So what did you--what decision did you make
6 at that point?

7 A. To put it on the shelf.

8 Q. By putting it on the shelf, what do you
9 mean?

10 A. The construction of the controls.

11 Q. Now, you had received your permits,
12 according to Exhibit 9; is that right?

13 A. Correct.

14 Q. Did DNR ever contact you about the fact
15 that--well, did DNR ever know that you hadn't built?

16 A. Repeat that.

17 Q. Sure. You made the decision not to build
18 because you couldn't buy the land; is that right?

19 A. That is correct.

20 Q. And this was in 1991?

21 A. Yes.

22 Q. Did DNR know that you had not built on that
23 site, at least initially?

24 A. I don't know.

25 Q. Okay. When is the first you heard from DNR?

1 A. I believe it's in 2000.

2 Q. Would you please turn to Exhibit 10,
3 Complainant's Exhibit 10. And what is that?

4 A. That's--I haven't read it all, but they are
5 sending me a letter in regards to my feedlot
6 operation permit that I had acquired in 1991.

7 Q. And this would be the feedlot that--and the
8 structures that you never built; is that right?

9 A. That is correct.

10 Q. Did you, in response to this letter, did you
11 get in touch with DNR?

12 A. No.

13 Q. And why not?

14 A. I wasn't out of compliance. I was kind of
15 doing it on my own.

16 Q. Okay. Then turn to Exhibit 11. What's the
17 date on that letter?

18 A. September 13th, 2000.

19 Q. And what is that letter?

20 A. It's another letter to the same effect as
21 the one prior to this showing that I was issued an
22 operational permit in 1991, which expired in 1996.

23 Q. And, again, the date on this letter is
24 September 13th, 2000?

25 A. Correct.

1 Q. What did you do when you received this
2 letter?

3 A. Nothing.

4 Q. Now, is there something else going on about
5 this same time when you were receiving these letters?
6 Obviously there were other things going on, but
7 regarding your feedlot, was there a new program
8 coming out that you had heard about?

9 A. Well, like the date says, September 13th in
10 2000, and like all farmers or feedlot operators, or
11 probably even lawyers, they talk, they talk together,
12 and there was a lot of chatter around about a new
13 plan coming and it was going to be--try to get it all
14 straightened out, and Iowa Cattlemen's Association
15 was working with the DNR, and there was a new plan
16 that was going to be coming in, kind of wait up. And
17 I wasn't out of compliance, so I waited.

18 THE ADMINISTRATIVE LAW JUDGE: Let me ask
19 one question, interrupt for a second. At this point
20 in time do you own? Still renting?

21 THE WITNESS: Still renting.

22 THE ADMINISTRATIVE LAW JUDGE: Still renting
23 today?

24 THE WITNESS: No.

25 THE ADMINISTRATIVE LAW JUDGE: That will

1 fill in later. I was just curious as we were going
2 through these exhibits.

3 Sorry, counsel.

4 MR. McAFEE: That's okay.

5 BY MR. McAFEE:

6 Q. Mr. Vos, have you purchased the feedlot?

7 A. Yes.

8 Q. When did you do that?

9 A. 2007.

10 Q. So in 2000 you're still renting, but is it
11 fair to say, as you said, you were talking to a lot
12 of people, and did it appear to you that a change in
13 the regulations might be coming?

14 A. Yes.

15 Q. And what was that change?

16 A. Well, I didn't know for sure. The EPA and
17 DNR and I--to my recollection, the EPA and the DNR
18 were not quite on the same floor, but they were
19 working it out, and the Iowa Cattlemen's Association
20 was working with it also. And they had a hard time
21 coming to a common base, but they finally come out
22 with the Iowa Plan. I believe it was in 2001.

23 Q. Okay.

24 A. And they went on--

25 Q. Before we get to that, there's been, as you

1 know, quite a bit of testimony about some structures
2 you have at your feedlot; is that right?

3 A. Yes.

4 Q. And these structures weren't built pursuant
5 to a permit; is that correct?

6 A. That is correct.

7 Q. Okay. Tell us about what's on the west side
8 of your feedlot.

9 A. Well, on the west side I have what--I call
10 it a basement--a basin and a terrace, also, and I
11 installed that to protect the west side.

12 Q. And why would you put it there?

13 A. Because that was in the pathway of the west
14 side of the feed yard.

15 Q. And what's below that basin?

16 A. Cornfield.

17 Q. And what's west below that?

18 A. Unnamed territory--unnamed tributary.

19 Q. And you--for the record, we've all been
20 calling it the unnamed tributary all along. I have a
21 feeling you don't call it the unnamed tributary when
22 you go home.

23 A. Probably not.

24 Q. What do you call it?

25 A. The creek by the silo where I store all my

1 feed.

2 Q. I think if you're comfortable with it, we'll
3 go ahead and call it the unnamed tributary.

4 A. That's fine.

5 Q. I want to understand what made-- I think
6 you've testified what made you decide or why you
7 decided to put those in; is that right?

8 A. Well, they--when the Iowa Plan came out--and
9 I was talking with a lot of people about this, and,
10 you know, you have to--first you sign up--there's a
11 lot of stepping stones involved with the Iowa Plan,
12 and I did all those. But while you're waiting, I
13 thought it would just be good to try to help the
14 situation out a little bit, so I installed them. And
15 that--on the west side is also the closest side to
16 the unnamed tributary.

17 Q. Okay. Now, are there also some other
18 structures, we'll call them, at your feedlot?

19 A. Yes, there is. Clear to the southeast
20 corner there are two terraces there also, and they
21 act as settling basins also.

22 Q. Have those been visible to you in some of
23 the exhibits you've seen?

24 A. Yes.

25 Q. And did you put those in?

1 A. Yes. One of them was already--it was a
2 terrace, and I built the pen to fit the terrace so it
3 would work for a basin.

4 Q. Okay. All right. Now, back to the Iowa
5 Plan. Would you please turn to Exhibit 12,
6 Complainant's Exhibit 12. And what is that?

7 A. This is the first form that I filled out for
8 the Iowa Plan at Ames. I went to the meeting in
9 Ames.

10 Q. And do you remember where that meeting was?
11 You say in Ames, but--

12 A. At the college.

13 Q. Okay. And were you aware of the Iowa Plan
14 before that meeting?

15 A. Just that there was something new coming.

16 Q. If you turn to page 2 of the Exhibit 12, is
17 that your signature?

18 A. Yes.

19 Q. And what's the date?

20 A. 4-4-01.

21 Q. And also on that page there's a line for the
22 maximum number of animals in the feedlot at any one
23 time.

24 A. Yes.

25 Q. And did you fill that out?

1 A. Yes.

2 Q. And what is that number?

3 A. Three thousand.

4 Q. How many cattle--do you remember how many
5 cattle you had at that time?

6 A. That's a ways back, but about 1,200 to 1,500
7 head.

8 Q. So you didn't have 3,000?

9 A. Oh, no.

10 Q. Why did you put 3,000 on the form?

11 A. Because if I join--I did join the Iowa Plan--
12 and would go through the steps, I was hoping to get
13 okayed, permitted, construction permits to expand.

14 Q. Mr. Vos, a question might be that you've
15 testified several times that you did not believe you
16 were out of compliance; is that right?

17 A. Correct.

18 Q. But you sign up for the Iowa Plan, which
19 provides time to get into compliance and get amnesty.
20 So why would you sign up?

21 A. Prior to the 2001 I was in compliance, and
22 then in 2001, the Iowa Plan came into effect. The
23 DNR was coming up with the different rules, and I was
24 nervous about that, and I wanted to enlarge, and, you
25 know, they always talk about the 25-year 24-hour

1 rain. I started worrying about the little rains, and
2 all of this. That's why I did it.

3 Q. Could you turn to Exhibit 13, please, and
4 that's Complainant's Exhibit 13. And what is this?

5 A. I'm not reading the whole letter. I read
6 the first paragraph, and I'm familiar with the
7 letter. This is a reply from the DNR saying they had
8 received my registration and explaining the rules,
9 and--about the--I'm going to stop for a little bit.

10 They explain the rules of the Iowa Plan, and
11 first there will be an in-house assessment, and then
12 an on-site assessment, and just tells you what their
13 goals will be--what their goals are.

14 Q. What did you--well, let me start with does
15 the letter tell you what to do going forward? And if
16 you would go to the end of the third paragraph of the
17 letter.

18 A. The third paragraph?

19 Q. Yeah, the third paragraph down.

20 A. "The receipt of your registration," that's
21 the third.

22 Q. Yes, the last sentence in that paragraph.

23 A. "Upon completion of the environmental
24 assessment, you will be notified of the results and
25 given direction regarding the next step to take."

1 Q. So what did you do?

2 A. Waited.

3 Q. Okay. Let's go to Complainant's Exhibit 14.

4 Is this a feedlot assessment for your feedlot?

5 A. Yes.

6 Q. And what's the date on that?

7 A. October 16, 2001.

8 Q. You applied or registered in March, and in
9 October you get this assessment. Was this what was
10 called the in-house assessment?

11 A. It says "Open Feedlot Assessment." Just a
12 minute. Let me read it a little bit.

13 THE ADMINISTRATIVE LAW JUDGE: Just to
14 advise you, counsel, it's not leading if you want to
15 direct him, as you did earlier, to a particular line.
16 That might assist him. It's a fairly dense letter.

17 THE WITNESS: I think I found it.

18 THE ADMINISTRATIVE LAW JUDGE: I was just
19 telling counsel how I would rule.

20 A. "The Iowa DNR will send the completed in-
21 house assessments to the appropriate field office and
22 you will be contacted to schedule a visit."

23 BY MR. McAFEE:

24 Q. So you received this. Did this letter give
25 you an assessment--or a number of points?

1 A. Yes.

2 Q. And how many points was that?

3 A. 132; medium, 132.

4 Q. Can you see there in the letter, what was
5 the range to be a medium?

6 A. 125 to 149.

7 Q. How did you feel when you received this
8 assessment?

9 A. Good.

10 Q. And why?

11 A. I was in the bottom half of medium.

12 Q. At the bottom of the page there, there's
13 three bullet points. Have you looked at those
14 before?

15 A. Yes.

16 Q. Can you tell me what those mean to you?

17 A. "High priority open feedlots, 2001 and
18 2002," those will be inspected first. High priority
19 first, medium second, and low third. I think you
20 might get bumped up, I believe it said, if you had a
21 complaint, or something, you know.

22 Q. Okay. Now, what did you do after you
23 received this?

24 A. Waited.

25 Q. Let's go to Complainant's Exhibit 15.

1 A. Fifteen?

2 Q. Yes, the next one. And what is this
3 exhibit?

4 A. This is dated 6-25-03, Lowell Vos Feedlot,
5 and what it was is Jeff Prier, who is from the DNR
6 office in Spencer, came to my facility for an on-site
7 inspection.

8 Q. Following this inspection, did you remain as
9 a medium?

10 A. State that again, please. My hearing is not
11 the best.

12 Q. Whenever you need to, you ask me to restate
13 it and I'll be glad to do that. What was your
14 understanding was the purpose of this inspection?

15 A. Like the letter before, first you had an
16 in-house assessment, and then later on--well, you
17 were categorized. I was a medium, and in that letter
18 they said they would have an on-site inspection
19 approximately the year 2003 to 2004, and they were
20 just following up on that.

21 Q. And what was their determination after being
22 on-site?

23 A. Same.

24 Q. And by the same, what do you mean?

25 A. Medium, 132 points.

1 Q. So nothing changed after they came and took
2 a look at it?

3 A. That is correct.

4 Q. Was DNR there for any other reason that day?

5 A. A complaint.

6 Q. And did you know about the complaint at the
7 time?

8 A. No.

9 Q. Do you know if DNR had any response to the
10 complaint after being there?

11 A. Say that differently.

12 Q. Sure. Did DNR tell you anything about the
13 complaint when they came that day?

14 A. No.

15 Q. Okay.

16 A. Well, they told me they had a complaint,
17 that's all.

18 Q. Did they--I'll use the term "they"--was
19 anyone with Jeff Prier that day?

20 A. Yes..

21 Q. Do you remember their names?

22 A. It started with an H, Husselman, or
23 something like this, and I don't remember the other
24 gentleman. But Jeff Prier and the other gentleman I
25 believe were in training, and Husselman, I believe he

1 was the teacher.

2 Q. When they were there that day, did they
3 mention anything to you about having a discharge?

4 A. No.

5 Q. Had no discussion about it?

6 A. No.

7 Q. Well, Mr. Vos, you've been present during
8 testimony in this hearing, and have you heard
9 testimony about what Jeff Prier observed that day?

10 A. Yes.

11 Q. And what have you heard?

12 A. He said that he saw a discharge, and I
13 believe he said he saw brown water.

14 Q. And where did he--

15 THE ADMINISTRATIVE LAW JUDGE: Just to make
16 it clear, you heard that for the first time--are you
17 saying you heard that for the first time in this
18 hearing?

19 THE WITNESS: Yes.

20 THE ADMINISTRATIVE LAW JUDGE: Not prior to
21 that?

22 THE WITNESS: No.

23 THE ADMINISTRATIVE LAW JUDGE: Okay.

24 MR. McAFEE: Your Honor, may I approach?

25 THE ADMINISTRATIVE LAW JUDGE: Yes.

1 MR. McAFEE: May we go off the record?

2 THE ADMINISTRATIVE LAW JUDGE: Yes.

3 (Discussion off the record.)

4 THE ADMINISTRATIVE LAW JUDGE: We'll go on
5 the record. Go ahead.

6 BY MR. McAFEE:

7 Q. Mr. Vos, I'd like to ask you--first of all,
8 we have Complainant's Exhibit 54 up on the LitePro,
9 and do you recognize that?

10 A. Yes.

11 Q. And can you--what this exhibit shows--and
12 can you see that there are some markings that Mr.
13 Prier made as to what--where he was standing when he
14 observed certain things that day?

15 A. Yes.

16 Q. And I'd like to have you, if you would, if
17 it's easiest for you, go around to the exhibit and
18 maybe take a pen, and not necessarily write on it,
19 but point out some things for us, if you will.

20 THE ADMINISTRATIVE LAW JUDGE: Do you have a
21 pen?

22 THE WITNESS: Yes.

23 BY MR. McAFEE:

24 Q. Do you see the letters "DP" on that exhibit,
25 Mr. Vos?

1 A. DP?

2 Q. Yes, D as in dog, and I believe it stands
3 for discharge point.

4 A. Right there (indicating).

5 Q. Yes. And do you see there's a line just to
6 the north of that where--what does that say, the line
7 leading up from just north of the point marked DP?

8 A. This is the DP, discharge point. Right
9 there is where the gentleman was standing, looking,
10 on the road (indicating).

11 Q. Can you tell us what you made--what are you
12 aware of that's in that vicinity?

13 A. Cornfield.

14 Q. And have you seen anything yourself at the
15 point marked DP in the past?

16 A. There's a tile there in the unnamed
17 tributary.

18 Q. Tell us about that because I believe on the
19 form and Mr. Prier had testified that you had
20 indicated there were no tile in the runoff area.

21 A. I'm afraid so.

22 Q. Can you tell the Court--explain to us about
23 the tile that you're telling us about today.

24 A. About this tile line?

25 Q. Yes.

1 A. This tile line here is an old tile line, not
2 a new one, you know, like a plastic one that runs all
3 along. This is old tile. They're two feet long,
4 they overlap, set them together, and my dad, who's
5 gone now, put that tile in along the east side of the
6 unnamed tributary.

7 Q. Now, when you say "east side," would you
8 mean right in the bank, or--

9 A. No. Down in the bottom of the stream, but
10 on the east side of the--I'd say of the edge, the
11 bank.

12 Q. Why did he do that?

13 A. I don't think he had any certain reason,
14 that's where it was put.

15 Q. Was he trying to farm that ground?

16 A. Yes. Oh, I thought you said why did he put
17 it on the east side. The reason the tile was put in
18 there is my dad had this idea that he will fill that
19 all in and we would farm it so he wouldn't have to
20 contend with this unnamed tributary.

21 Q. Did it work?

22 A. For a while, and then it didn't work.

23 Q. Now, there's this old tile in there?

24 A. Yes.

25 Q. And at the point marked DP, have you ever

1 seen anything coming from that tile?

2 A. Yes.

3 Q. What? Tell the Court what you see.

4 A. Just water.

5 Q. So what do you believe Mr. Prier saw that
6 day?

7 A. Water coming out of that tile.

8 MR. BREEDLOVE: Objection, Your Honor.

9 Objection. That's speculation.

10 THE ADMINISTRATIVE LAW JUDGE: That's not
11 speculation. This is his property and he knows the
12 point at which this witness was there. He can opine
13 that, or maybe you can rephrase the question and say,
14 "If you were standing there, what would you see," as
15 opposed to asking what was in the eyes of Mr. Prier.

16 MR. McAFEE: I understand, Your Honor.

17 BY MR. McAFEE:

18 Q. Let me say it this way, Mr. Vos: Have you
19 ever seen anything coming from that discharge point?

20 A. Yes.

21 Q. And what do you believe--or what have you
22 seen, and where was it coming from?

23 A. I believe that it is very possible it was
24 coming out of that tile, and the reason I say that is
25 that tile is old, and it could very well leak.

1 Q. And have you seen that?

2 A. Yes.

3 Q. And are you very familiar with the point
4 that has been marked here?

5 A. Yes. I go by it every day feeding--doing my
6 chores.

7 Q. Do you always see water coming out there?

8 A. No. Sometimes it's exposed, sometimes it
9 isn't.

10 Q. Okay. Thank you. I believe we're done with
11 that.

12 MR. McAFEE: Your Honor, may I approach?

13 THE ADMINISTRATIVE LAW JUDGE: Yes. You
14 want to shut the machine off? We'll go off the
15 record while you take care of that.

16 (Discussion off the record.)

17 THE ADMINISTRATIVE LAW JUDGE: We'll go back
18 on the record.

19 MR. McAFEE: Yes, please.

20 BY MR. McAFEE:

21 Q. So, Mr. Vos, the inspection is completed
22 that day, you remain a medium priority lot. I guess
23 I have another question for you regarding Exhibit 15.
24 Do you have that there in front of you again?

25 A. Yes.

1 Q. Do you see down there where under the
2 heading "Runoff"--

3 A. Yes.

4 Q. --I guess it would be three lines down,
5 whoever completed this form circled "Yes" in
6 response to "Evidence of liquid runoff reaching
7 State waters"?

8 A. Yes.

9 Q. Then the next line refers to and has some
10 markings there about a sample that was taken. And
11 you've heard the testimony regarding this. Mr. Vos,
12 my question is, were you aware that this sample had
13 been taken?

14 A. No.

15 Q. When did you become aware of it?

16 A. Trial.

17 Q. When you first saw this document?

18 A. Yes.

19 Q. In other words, Mr. Prier, nor anyone else
20 who was with him that day, they didn't come back and
21 talk to you about this sample after they took it?

22 A. No. I did not stay with them all the time.
23 No.

24 Q. Could you please turn to Exhibit 16, please.
25 Do you see the date on this letter?

1 A. July the 2nd, 2003.

2 Q. In general, do you know what this letter is
3 in regard to?

4 A. Just a letter confirming that they did the
5 on-site assessment.

6 Q. And I believe it gives the name of the
7 people who were there. And for purposes of our court
8 reporter, do you see the name on the second line?

9 A. Yes.

10 Q. Is that Ken Hassenius?

11 A. Yes, I do.

12 Q. Is that the person you were speaking about?

13 A. Yes.

14 Q. And the other person with them, is that Rick
15 Martens?

16 A. Yes.

17 Q. What did you do after you received this
18 letter? Maybe I jumped ahead of myself there.

19 At the bottom of the first page and then
20 onto the next page, does it--does this letter
21 instruct you to do some things?

22 A. Yes.

23 Q. And what does it tell you to do?

24 A. To contact an engineer or the NRCS. That's
25 pretty well it.

1 Q. And what did you do?

2 A. I went to the NRCS.

3 Q. Why did you do that?

4 A. Because I was told there was money available
5 to help put these facilities in.

6 Q. Who did you talk to at NRCS?

7 A. Jerry Sindt.

8 Q. And what did you talk to Jerry about?

9 A. If I could get EQIP money, and if they
10 had--I'm trying to think of the right
11 word--capabilities of doing the engineering plan for
12 my structures.

13 Q. And what did he say?

14 A. Yes.

15 Q. Did you talk with Jerry about any type of
16 system other than using structures?

17 A. Alternative technology.

18 Q. Had you heard about those at the time you
19 went to talk to Jerry?

20 A. I heard about them in a meeting. I go to a
21 lot of meetings at the Iowa Cattlemen's. I'm a
22 member of the Iowa Cattlemen's, and it was brought
23 up, and the Iowa Cattlemen's was also behind it and
24 pushing it, and I thought the south side of my feed
25 yard would be perfect for alternative technology.

1 Q. What were the advantages of alternative
2 technology?

3 A. Less money, and you don't have to pump all
4 that water, that irrigation system.

5 Q. Okay. Could you please turn to Exhibit 17.
6 What is the date on this letter?

7 A. February 23rd, 2004.

8 Q. So to kind of put things in perspective, the
9 last exhibit was dated July 2nd, 2003. So we're--
10 what are we? Roughly six, eight months later,
11 something like that?

12 A. Yes.

13 Q. What had been going on in the meantime?

14 A. I'd been talking to Jerry, acquiring EQIP
15 money, alternative technology, and Jerry said--kind
16 of knew how I felt. He said, "We'll take care of it.
17 We'll get it going."

18 Q. Then comes February 23rd, 2004, and you
19 receive this letter. Would you read the subject line
20 for us.

21 A. "Failure to submit requested information,
22 Woodbury County, Facility No. 61003." And then in
23 bold print "Notice of violation."

24 Q. What did you do when you received this
25 letter?

1 A. Contacted Mr. Sindt with the NRCS.

2 Q. And what did you talk with him about?

3 A. We got to do something about this.

4 MR. BREEDLOVE: Objection, Your Honor. This
5 is calling for hearsay.

6 THE ADMINISTRATIVE LAW JUDGE: Overruled.

7 A. I talked to Jerry and said, "We got to get
8 going. We got to push hard."

9 BY MR. McAFEE:

10 Q. Okay. Let's go to Exhibit 18, please. Back
11 to--you said you talked to Jerry and said, "We need
12 to get going." What did Jerry say?

13 MR. BREEDLOVE: Objection. Hearsay.

14 THE ADMINISTRATIVE LAW JUDGE: You'll be
15 able to deal with that. You can call this witness,
16 Mr. Sindt--was he a witness? No, Mr. Sindt was not.
17 Anyway, on rebuttal you can do that, and you can ask
18 him questions on cross-examination. I'm going to
19 allow this question.

20 So ask your question, counsel.

21 A. Repeat the question.

22 BY MR. McAFEE:

23 Q. Well, Mr. Vos, what I am trying to get at
24 here is your dialogue with Mr. Sindt, and you
25 indicated you asked him to get going, take care of

1 it. Is that what you're saying?

2 A. Yes.

3 Q. And did he agree?

4 A. Yes.

5 Q. Okay. Now we're to Exhibit 18. What's the
6 date on this letter?

7 A. April 6th, 2004.

8 THE ADMINISTRATIVE LAW JUDGE: Do you mean
9 Exhibit 18 we're on?

10 MR. McAFEE: Yeah, Complainant's Exhibit 18.

11 THE ADMINISTRATIVE LAW JUDGE: 18?

12 THE WITNESS: The letter from the NRCS
13 office.

14 THE ADMINISTRATIVE LAW JUDGE: Okay. Thank
15 you. I had just moved ahead. I'm sorry. Go ahead.

16 MR. McAFEE: Thank you, Your Honor.

17 BY MR. McAFEE:

18 Q. Mr. Vos, what is this letter?

19 A. This letter is a letter that Jerry drew up
20 and sent it off to DNR, and--you want me to read the
21 whole letter?

22 Q. Oh, no. Well--

23 A. It explains to them they're trying to get
24 all this done, and the first five words is--I'm going
25 to read--"It is high time I provide." And then the

1 last six or seven words at the end of the letter, "I
2 am also learning as we go."

3 Q. What does that mean to you?

4 A. Well, at the time that I was in the office,
5 at the NRCS office, this was--this Iowa Plan and the
6 EQIP money, this was all new for the NRCS office.
7 And this Iowa Plan--and it was backlogging, and I
8 don't want to use the word "overwhelmed," but they
9 were very, very, very busy, and a lot of the rules
10 were blurry or gray from the DNR.

11 Q. Let's go to Exhibit 19, please. And what is
12 this? Maybe I should start with, Mr. Vos, read the
13 heading on this letter, the subject.

14 A. April 27th, 2004, and this is to me,
15 Mr. Lowell Vos. "Subject: Failure to submit
16 complete plan of action, Facility No. 61003, Woodbury
17 County."

18 Q. If you would, just tell me, or read it if
19 you need to, but the first couple of lines, what does
20 that refer to?

21 A. Plan of action.

22 Q. Okay. And is it referring to Exhibit 18?

23 A. Yes.

24 Q. Tell us how you know that.

25 A. I believe the record shows that the first

1 plan of action was incomplete, and this letter here
2 from the NRCS office from Jerry Sindt, he didn't
3 provide all the information, and that's about all I
4 can say.

5 Q. So it refers to this letter, refers to April
6 6th, 2004. on that date your plan of action was
7 received and reviewed; is that right?

8 A. I believe that is correct.

9 Q. And is that the same date that is on Exhibit
10 18, the letter from NRCS?

11 A. Repeat the question.

12 Q. This letter from DNR to you states that on
13 April 6th, 2004, your plan of action was received and
14 reviewed, and then goes on to say that it was
15 incomplete. Is that date that they are referring to
16 as the plan of action, is that the same date as the
17 letter from NRCS that was Exhibit 18?

18 A. I didn't hear you on your date. Didn't you
19 say it was April the 8th?

20 THE ADMINISTRATIVE LAW JUDGE: How about
21 this: If you look at Exhibit 18, sir--

22 THE WITNESS: Eighteen?

23 THE ADMINISTRATIVE LAW JUDGE: Yeah. That's
24 the letter to you from Jerry Sindt. Are you on 18?

25 THE WITNESS: Yes.

1 THE ADMINISTRATIVE LAW JUDGE: That's the
2 one where it says, "Well, it's high time."

3 THE WITNESS: Yes.

4 THE ADMINISTRATIVE LAW JUDGE: What's the
5 date on that letter?

6 THE WITNESS: April 6, 2004.

7 THE ADMINISTRATIVE LAW JUDGE: Is that the
8 same date that's on the next exhibit, Exhibit 19?

9 THE WITNESS: No.

10 THE ADMINISTRATIVE LAW JUDGE: Well, on
11 Exhibit 19--you have that in front of you? That's
12 April 27th, right?

13 THE WITNESS: Yes.

14 THE ADMINISTRATIVE LAW JUDGE: You see in
15 the paragraph it says, "A complete plan of action was
16 to be submitted"?

17 THE WITNESS: Yes.

18 THE ADMINISTRATIVE LAW JUDGE: Next line--

19 THE WITNESS: April 6, 2004.

20 THE ADMINISTRATIVE LAW JUDGE: Isn't that
21 the same date as that previous letter?

22 THE WITNESS: Yes. I'm sorry about that.

23 THE ADMINISTRATIVE LAW JUDGE: That's all
24 right.

25

1 BY MR. McAFEE:

2 Q. What did you do when you received this April
3 27, 2004, letter from DNR?

4 A. Went back to talk to Jerry at the NRCS.

5 Q. Let's move to Exhibit 20. Do you recognize
6 this exhibit?

7 A. Yes.

8 Q. Go to the second page of this exhibit. Is
9 that your signature?

10 A. Yes.

11 Q. And what is the date?

12 A. 6-10-04.

13 Q. And then if you go to the next
14 page--actually there's two more pages. Do you see
15 those?

16 A. Yes.

17 Q. Is it your understanding this is a plan of
18 action?

19 A. Yes.

20 Q. Now, you signed this. Do you remember, did
21 you send this in to DNR, or did NRCS do it for you?

22 A. NRCS did it.

23 Q. And go to--down at the bottom where it says
24 page 24 of 27 of this exhibit.

25 A. Yes.

1 Q. And who is it signed by on behalf of NRCS?

2 A. Charles Slocum.

3 Q. Had you met Charles?

4 A. Yes.

5 Q. How had you met him?

6 A. He was out at the farm, at the feedlot.

7 Q. Was he acting as your engineer?

8 A. Yes.

9 Q. Were you aware of these dates--I'm sorry.

10 Above Charles' signature there's a series of
11 dates there. Do you see those?

12 A. Yes.

13 Q. Were you aware of those dates when he
14 submitted this?

15 A. Not for sure.

16 Q. But, of course, you did sign it; right?

17 A. No.

18 Q. Okay. Mr. Vos, you did sign the form, which
19 is page 22 of 27; is that right?

20 A. That is correct.

21 Q. Let's go to Complainant's Exhibit 21.

22 Before we get to this one--I guess I got a little
23 ahead of myself--we need to back up a little bit.

24 The plan of action, the document we just looked at,
25 your signature was June 10, 2004; right?

1 A. Yes.

2 Q. And you were working with Charles Slocum as
3 your engineer?

4 A. And Jerry Sindt.

5 Q. Okay. At some point did you start working
6 with a different engineer?

7 A. Yes.

8 Q. And who was that?

9 A. Brad Woerner with Eisenbraun Engineering.

10 Q. Do you know why you started working with
11 him?

12 A. Because NRCS wasn't getting it done, and
13 NRCS also said they were overloaded, they couldn't
14 handle it all, and they wanted to sublet work out.

15 Q. Okay. Do you remember when you first met
16 with Brad Woerner?

17 A. I want to say it was July.

18 Q. So could we say it was about this same time?

19 A. Yeah.

20 Q. Okay. And did he come out to your feedlot?

21 A. Yes, he did.

22 THE ADMINISTRATIVE LAW JUDGE: So this is
23 July '04; is that right?

24 THE WITNESS: Yes.

25

1 BY MR. McAFEE:

2 Q. Now we go to Exhibit 21, which I already had
3 you turn to. Read the subject line of this exhibit.

4 A. "Plan of action approval for open feedlot
5 manure control system"--

6 Q. Mr. Vos, I don't mean to interrupt, but we
7 don't have to read the Woodbury County and ID number.

8 THE ADMINISTRATIVE LAW JUDGE: Which exhibit
9 are we on?

10 MR. McAFEE: Exhibit 21.

11 BY MR. McAFEE:

12 Q. This exhibit tells you that the plan of
13 action that was submitted with your signature of June
14 10 has been approved, and this is in August; is that
15 right?

16 A. Yes.

17 Q. So, what happens then?

18 A. I believe, as it says down below in the
19 letter there, Charles Slocum--it was subletted out to
20 Eisenbraun. NRCS was taking care of the details.

21 Q. So is it your understanding both Brad
22 Woerner and NRCS were working on it?

23 A. Yes.

24 Q. Now we need to jump ahead just a little bit
25 here. Go to Complainant's Exhibit No. 23. Now,

1 we're not going to, at least for purposes of my
2 questions to you, we're not going to go through this.
3 This is the EPA's inspection form when they were
4 there several years later. But could you go further
5 back in that exhibit and there's a series of pages,
6 27 pages, and I'd like you to go to page 4 of 27.

7 A. Yes.

8 Q. Do you have that there?

9 A. Yes.

10 Q. Could you tell--do you see a date on that
11 exhibit?

12 A. The 6th day of October, 2004.

13 Q. And do you know what this is?

14 A. That is a proof of publication that you have
15 to go to the post office--for example, it has a
16 bulletin board, and you put this for public--for
17 people to read, and if there's any complaints, they
18 have a time--you know, that's what it's for.

19 Q. Did you actually do that?

20 A. Yes, I did.

21 Q. And I believe--it appears this exhibit is
22 where it was published in--is that your local
23 newspaper, Kingsley News-Times?

24 A. Yes.

25 Q. Was this regarding an NPDES permit?

1 A. Yes.

2 Q. Do you know who prepared this notice for you
3 to take there? Was it NRCS or was it Brad Woerner?

4 A. I don't remember.

5 Q. Okay. Let's go back now to Exhibit 22.
6 Could you give us the date on this exhibit?

7 A. April 28th, 2005.

8 Q. Now, Mr. Vos, there's been a fair amount of
9 testimony regarding this exhibit during this hearing,
10 but could you read to us the subject line? And,
11 again, we don't need the facility ID number or the
12 county.

13 A. "Failure to meet submittal deadline for
14 final engineering plan. Notice of violation/
15 imminent termination of participation in Iowa Plan."

16 Q. Did you receive this letter?

17 A. Yes.

18 Q. It was by certified mail, wasn't it?

19 A. Yes. It scared me.

20 Q. What did you do?

21 A. Contacted Jerry at the NRCS office.

22 Q. Did you contact him, or did he--I think if
23 you look on page 2 of the letter, did he get a copy
24 also? Does it show that he received a copy?

25 A. Yes.

1 Q. Did he contact you?

2 A. No.

3 Q. Okay. You contacted him, and what did you
4 talk about?

5 A. I'm thinking about that last question. I
6 think Jerry did contact me.

7 Q. What did you two talk about? Whoever
8 contacted who, what did you talk about?

9 A. We have to get--try harder and try to get
10 our permit in, our paperwork, and just get it done
11 because this letter was saying we were in violation.

12 Q. Okay. Okay. Did you talk to Brad Woerner
13 also?

14 A. Yes.

15 Q. And what did you talk to Brad about?

16 A. Time is of the essence.

17 Q. Now, Mr. Vos, up to this point, I believe
18 previous testimony and your testimony will show that
19 you had been considering an alternative technology
20 system.

21 A. Yes.

22 Q. What decision did you make after receiving
23 this letter?

24 A. I was talking to Brad Woerner and he
25 suggested to forget about the alternative technology.

1 The rules from DNR--and I believe Ames was involved
2 with a computer model doing this, and it was dragging
3 along and dragging along, and I said, "Forget about
4 it and just go to the basin-type structure."

5 Q. What was your understanding after receiving
6 this letter and talking to Jerry Sindt about who's
7 going to take care of things?

8 A. Well, Jerry had been doing all this lining
9 up. I was of the understanding Jerry took care of it.

10 Q. Now, you received this letter April 28th of
11 2005. Let's put this in a little bit of perspective
12 as far as the dates. How long was left in the Iowa
13 Plan?

14 A. I believe they say--I say April 1, 2006.

15 Q. Okay. So, what is that? Less than a year?

16 A. Uh-huh.

17 Q. Now, this letter tells you, I think--it's
18 been read into the record a number of times. I don't
19 know that we need to do that again, but in the second
20 paragraph, doesn't it tell you you have 30 days to
21 get your engineering plan in?

22 A. Yes, it does.

23 Q. Or you won't be in the Iowa Plan anymore?

24 A. It's in bold lettering in there, "If your
25 final engineering plan is not submitted within 30

1 days of receipt of this letter your facility will no
2 longer be participating in the Iowa Plan"--
3 "participant in the Iowa Plan."

4 Q. And did you and Jerry talk about that?

5 A. No, not a lot. We both received the letter.
6 Time is of the essence, we got working on it, Jerry
7 did.

8 Q. Then I believe Mr. Woerner, as your
9 engineer, testified they began work that fall--that
10 summer--the record will show they began work taking
11 soil borings, et cetera. And then, as we'll get
12 to--well, you've been present for the testimony, and
13 is it your understanding that a permit application
14 was submitted in December of 2005?

15 A. Correct. Yes.

16 Q. Now, in between there did you ever hear
17 anything back from DNR regarding this deadline?

18 A. No.

19 Q. You would admit, December 2nd, 2005, is not
20 within 30 days of April 28, 2005; right?

21 A. Yes.

22 Q. Okay. And was it your understanding you
23 were still in the Iowa Plan?

24 A. Yes.

25 Q. Why?

1 A. I never received anything other than this
2 letter, nothing to verify, nothing--no other word
3 from the DNR.

4 Q. And were you moving forward?

5 A. Yes.

6 Q. Okay. Then we go to December of 2005. Your
7 permit application is submitted, and were you getting
8 ready, then, to start construction when you received
9 your permit?

10 A. The plans were submitted by Brad Woerner in
11 December--I'm not very good with the dates, but I
12 know the months--December of 2005, and time is going
13 on, and I'm wondering what happened to the
14 construction permit, which is supposed to be out
15 within 60 days.

16 So I call Brad. He said he will contact
17 somebody at the DNR, and he did, and they said they
18 were backlogged, a lot of pressure not only from
19 cattle, there was other confinements, and it would be
20 coming. And I was trying--the reason I was asking
21 about that is December of 2005 we're going into the
22 winter of 2005-2006, and if you put on 60 days, it
23 doesn't take a rocket scientist to know we're right
24 in the dead of winter, or maybe coming out of it.
25 And I talked to three construction people, and they

1 were--if I would get it right away, maybe we could
2 get started on it, or something, before the deadline.

3 Q. What happened?

4 A. I did not get the permit, construction
5 permit.

6 Q. Could you then turn to Exhibit 23, which
7 we'd looked at briefly before. Do you see what that
8 is?

9 A. That is a report from Lorenzo Sena and K.
10 Goschen, and he was the first witness that we had at
11 the beginning of the trial. He was at my site on
12 May--or April--just a minute--31st, 2006.

13 Q. Would that be the date there at the top,
14 first line of the actual form under "General
15 Information," and then the second box over where it
16 says "Inspection Date"?

17 A. That is correct.

18 Q. What date is that again?

19 A. 5-31-06.

20 Q. Is that the first you had heard about
21 anything, the status of your feedlot after submitting
22 your--I'm sorry--after talking to Brad about where
23 your permit was?

24 A. That is--yes.

25 Q. And you have not received it yet, then, had

1 you?

2 A. Would you--

3 Q. I'm sorry. I didn't say that very well. At
4 the time this inspection was done at the end of May
5 of 2006, had you received your construction permit?

6 A. No.

7 Q. You were still waiting?

8 A. Yes.

9 Q. And then did you receive a copy of this in
10 the mail, do you remember?

11 A. I did, after he made the inspection and went
12 home and then he put it altogether and sent it to me.

13 Q. Now, you ultimately did receive a
14 construction permit; right?

15 A. Yes.

16 Q. When did you receive that?

17 A. I received it in September, the first week
18 of September. I can always remember that. The
19 Spencer Fair is on, but I think the record shows that
20 it was stamped in August sometime.

21 Q. Did you talk to Brad Woerner then?

22 A. Yes.

23 Q. And what did you decide to do?

24 A. He suggested that it's a bad time of year to
25 start out with a project like that.

1 Q. And what do you mean by that? Being in the
2 winter?

3 A. In winter, holes in the ground, snow, water.

4 Q. Mr. Vos, before we move on, looking back
5 at--as has been pointed out during this hearing, you
6 had several deadlines you missed?

7 A. Yes, I did.

8 Q. If you had it to do all over again, what
9 would you do differently, if anything?

10 A. As I hear all the testimony and I'm thinking
11 about this for six or seven days, I would not have
12 depended upon the NRCS as heavily as I did. I'm not
13 saying they did anything wrong. It was a big load.

14 THE ADMINISTRATIVE LAW JUDGE: I didn't hear
15 the last thing, sir.

16 THE WITNESS: I'm not saying they did
17 anything wrong. It was a big load.

18 THE ADMINISTRATIVE LAW JUDGE: "Big load."
19 That's what I didn't hear. I thought you said
20 bigelow.

21 THE WITNESS: I don't talk very plain.

22 THE ADMINISTRATIVE LAW JUDGE: Big load.
23 Thanks.

24 MR. McAFEE: Your Honor, may we go off the
25 record for just a minute?

1 THE ADMINISTRATIVE LAW JUDGE: Sure.

2 (Discussion off the record.)

3 THE ADMINISTRATIVE LAW JUDGE: Back on the
4 record.

5 MR. McAFEE: May I approach, Your Honor?

6 THE ADMINISTRATIVE LAW JUDGE: Yes, sir, of
7 course.

8 MR. McAFEE: Thank you.

9 BY MR. McAFEE:

10 Q. Mr. Vos, I've just handed you what's been
11 marked at the bottom of the page--or what stands for
12 Complainant's Exhibit 25. Can you tell me what that
13 is?

14 A. January the 7th of 2007 I received this
15 letter from the EPA.

16 Q. What does it state on the right-hand side
17 about a third of the way down? It looks like a
18 caption. What does it say?

19 A. Proceedings, is that what you mean?

20 Q. No. On the right-hand side.

21 A. "Finding of violation, order for
22 compliance."

23 Q. Now, did this document come with something
24 else in the mail?

25 A. Yes.

1 MR. McAFEE: Your Honor, may I approach?

2 THE ADMINISTRATIVE LAW JUDGE: Yes, of
3 course. Now, is this part of Exhibit 25, or what is
4 this, counsel?

5 MR. McAFEE: Your Honor, this was not part
6 of Exhibit 25 as part of the prehearing exchange, and
7 so I will discuss this, and then I will move for this
8 separately.

9 THE ADMINISTRATIVE LAW JUDGE: But it was
10 part of the prehearing exchange you say?

11 MR. McAFEE: No, it was not. It was not.
12 Exhibit 25 was part of the prehearing exchange. This
13 is a letter that accompanied Exhibit 25, as the
14 witness has testified to, but it was not part of the
15 prehearing exchange, so I will move separately.

16 THE ADMINISTRATIVE LAW JUDGE: Sure. Okay.

17 BY MR. McAFEE:

18 Q. Mr. Vos, I've handed you a document that has
19 a date on it. What is the date on that document?

20 It's a letter.

21 THE ADMINISTRATIVE LAW JUDGE: The stamp's
22 in the top left.

23 THE WITNESS: There's several. I was just
24 reading.

25 A. That's January 9th or 19th, 2007. I think

1 it's the 9th, it must be. Is that what you mean?

2 BY MR. McAFEE:

3 Q. Yes, but could you read the numbers there?
4 Maybe that would help. It's a stamp, a little hard
5 to see.

6 A. J-a-n, it looks like a 19, 2007.

7 Q. Okay. Does that appear to be January 19th,
8 2007?

9 A. Yes.

10 Q. As you recall and as you look at these two
11 documents, did you receive them together?

12 A. Yes.

13 Q. From the time that you received Exhibit 23,
14 which was the inspection report when EPA was there--
15 and I think you testified you received that
16 inspection report some--a short time later; is that
17 right?

18 A. Yes.

19 Q. From that time until you received these two
20 documents in the mail, had you heard anything from
21 EPA at all?

22 A. No.

23 Q. And, again, you received these two documents
24 in the mail. I believe--the one marked January 19th,
25 2007, the letter, does it state on there "Certified

1 mail"?

2 A. Yes.

3 MR. McAFEE: Your Honor, I would first move
4 for admission of Complainant's Exhibit 25.

5 THE ADMINISTRATIVE LAW JUDGE: Okay. And do
6 you want it, just to avoid confusion, do you want it
7 denominated as your exhibit, or CX-25? There
8 wasn't--there was no CX-25.

9 MR. McAFEE: You're right. I should not
10 move for admission of the Complainant's exhibit.

11 THE ADMINISTRATIVE LAW JUDGE: What's your
12 last number? I had 17, but don't hold me to that.

13 MR. McAFEE: I believe there was an 18, Your
14 Honor. In fact, there was. You may not have a copy
15 of it yet, but there was an R-18, and we will--I have
16 the copy here. I need to have copies made. So this
17 would be R-19. I would move for admission of R-19,
18 which is the finding of violation and order for
19 compliance.

20 THE ADMINISTRATIVE LAW JUDGE: Okay. R-19,
21 and that, previously, EPA has expressed no objection.

22 MR. BREEDLOVE: No objections, Your Honor.

23 THE ADMINISTRATIVE LAW JUDGE: Okay.
24 Respondent's Exhibit 19 is admitted.

25

1 (Respondent's Exhibit 19 was
2 received in evidence.)

3 MR. McAFEE: Then, Your Honor, I would also
4 move for admission of the letter dated January 19,
5 2007, that the witness has testified he received with
6 the finding of violation, order for compliance, and I
7 would move for admission of that as R-20.

8 MR. BREEDLOVE: No objections, Your Honor.
9 (Respondent's Exhibit 20 was
10 received in evidence.)

11 BY MR. McAFEE:

12 Q. Okay. Mr. Vos, could you take a look at
13 R-20? Do you have that?

14 A. Exhibit 20?

15 THE ADMINISTRATIVE LAW JUDGE: Well, we just
16 named it. It's the January 19th letter, the
17 certified letter.

18 THE WITNESS: Yes.

19 THE ADMINISTRATIVE LAW JUDGE: Is that the
20 one you're referring to, counsel?

21 MR. McAFEE: Yes. I'm sorry.

22 THE WITNESS: I have it.

23 THE ADMINISTRATIVE LAW JUDGE: This one
24 here, right?

25 THE WITNESS: Yes.

1 BY MR. McAFEE:

2 Q. Did you read this pretty closely when you
3 received it?

4 A. Yes.

5 Q. Was it upsetting?

6 A. Yes, it was for my wife and me. We get our
7 mail at noon. I was in having dinner when we got it.

8 Q. On page 2 of this letter--I know it may have
9 been a while since you read it, but what was your
10 understanding of this letter?

11 A. Of the first letter, the notice of
12 administrative compliance order letter?

13 Q. Yes, Exhibit--the January 19, 2007,
14 certified mail letter.

15 A. Yes. What was the question about that?

16 Q. What was your understanding that this letter
17 meant?

18 A. That I was in violation, and there was--I'm
19 trying to think of the correct word, but there was
20 going to be a violation against me, and EPA would
21 expect damages.

22 Q. Could you look at page 1 of the letter--

23 A. Yes.

24 Q. --the fourth paragraph. It would be the
25 bottom paragraph on that page.

1 A. Yes.

2 Q. And I want you to start with the second
3 sentence, and I would like to have you read--I
4 believe it's the next two sentences.

5 THE ADMINISTRATIVE LAW JUDGE: And do you
6 mean beginning at the second sentence there, counsel,
7 "The Iowa Plan created a five-year"?

8 MR. McAFEE: Yes, please.

9 THE ADMINISTRATIVE LAW JUDGE: Do you see
10 where he is?

11 THE WITNESS: Yes.

12 THE ADMINISTRATIVE LAW JUDGE: Read those
13 two sentences, did you say?

14 MR. McAFEE: Yes.

15 A. "The Iowa Plan created a five-year amnesty
16 program in 2001 that provided facilities like yours
17 an opportunity to come into compliance without the
18 imminent threat of enforcement by EPA and the Iowa
19 DNR. You participated in the Iowa Plan, however
20 because of your failures to meet deadlines, you were
21 unable to obtain an NPDES permit and install adequate
22 controls by the end of the Iowa Plan, April 1, 2006."

23 Q. Mr. Vos, you've been present, of course,
24 during these proceedings. And have you heard
25 testimony from various witnesses, including the Iowa

1 DNR, that you were kicked out of the Iowa Plan? Have
2 you heard that testimony?

3 A. Yes.

4 Q. Well, when did you first learn, or have any
5 knowledge that anyone was telling--taking the
6 position that you were kicked out of the Iowa Plan?

7 A. Sitting by you by the counsel table.

8 THE ADMINISTRATIVE LAW JUDGE: You mean
9 during this hearing?

10 THE WITNESS: Yes.

11 THE ADMINISTRATIVE LAW JUDGE: Okay.

12 BY MR. McAFEE:

13 Q. And when you received this letter, did this
14 indicate to you that--the Iowa Plan was over; right?

15 A. Yes.

16 Q. But did this letter give you any idea that
17 you had been kicked out of the Iowa Plan before it
18 was over?

19 A. According to that sentence that I just read,
20 the Iowa Plan, April 1, 2006.

21 Q. And the EPA inspected you on May 31st, 2006,
22 as you've testified?

23 A. Yes.

24 THE ADMINISTRATIVE LAW JUDGE: Counsel,
25 let's go off the record.

1 (Discussion off the record.)

2 (Short break.)

3 THE ADMINISTRATIVE LAW JUDGE: Let's go back
4 on the record.

5 MR. McAFEE: Thank you, Your Honor.

6 Your Honor, I'd now like to use with the
7 witness, and--I'd like to have the witness take a
8 look at what has been marked as C-28 Pollard, photo
9 16 MS.

10 MR. McAFEE: May I approach, Your Honor?

11 THE ADMINISTRATIVE LAW JUDGE: Yes. Of
12 course.

13 MR. McAFEE: May we go off the record a
14 minute?

15 THE ADMINISTRATIVE LAW JUDGE: Sure. We're
16 off the record.

17 (Discussion off the record.)

18 THE ADMINISTRATIVE LAW JUDGE: Back on the
19 record. And we are looking at C-28 Pollard. Of
20 course there's lots of C-28 Pollard. This is photo
21 16 MS?

22 MR. McAFEE: Yes, Your Honor.

23 BY MR. McAFEE:

24 Q. Mr. Vos, have you located what has been
25 designated C-28 Pollard, photo 16 MS?

1 A. Yes.

2 Q. And, Mr. Vos, I have it on the LitePro. You
3 may look for it in your exhibit book for witnesses.
4 Do you see in the upper right-hand corner--first of
5 all, what is this a photo of?

6 A. It's a picture of the south side of my
7 feedlot directly below pen 3--

8 Q. And--

9 A. --which is empty.

10 Q. And you did not take this photo; is that
11 correct?

12 A. That is correct.

13 Q. And is it your understanding from being
14 present during the testimony that this photo was
15 taken by--well, it was taken--first of all, is there
16 a date on it?

17 A. 3-11, 2008.

18 Q. And is it your understanding that
19 Mr. Pollard took this photo?

20 A. That is my understanding.

21 Q. Now, in the upper right-hand corner there is
22 a circle that the record will reflect that
23 Mr. Pollard drew, and he put the letters "MS" next to
24 it. Do you see that?

25 A. Yes.

1 Q. And the testimony, as I recall it, was that
2 Mr. Pollard indicated that was a manure stockpile.

3 Is that what you recall?

4 THE ADMINISTRATIVE LAW JUDGE: You said you
5 recall him saying?

6 MR. McAFEE: Yes.

7 THE ADMINISTRATIVE LAW JUDGE: Okay. Is
8 that what you recall he said?

9 THE WITNESS: Is that what I recall Stephen
10 said?

11 BY MR. McAFEE:

12 Q. Yes.

13 A. Yes.

14 Q. Do you, looking at this photo, can you tell
15 us what you believe that is?

16 A. That is my dirt stockpile that we use all
17 the time when we're scraping yards. Dirt comes along
18 when we're scraping yards. We have to have fresh
19 dirt, and we're always making sure the yard is
20 manicured. The better shape the yards, and smooth,
21 the better the box scraper works. That is dirt, not
22 manure.

23 Q. Thank you.

24 MR. McAFEE: Your Honor, may I approach?

25 THE ADMINISTRATIVE LAW JUDGE: Yes.

1 BY MR. McAFEE:

2 Q. Mr. Vos, could you, in the notebooks there,
3 could you please find Exhibit 43, Complainant's
4 Exhibit 43.

5 MR. McAFEE: May I approach, Your Honor?

6 THE ADMINISTRATIVE LAW JUDGE: Yes.

7 BY MR. McAFEE:

8 Q. And in that exhibit, Mr. Vos, would you
9 please--there's a--well, there are numbers on the
10 lower right-hand corner. And would you go to, say,
11 page 29?

12 A. Yes.

13 Q. Have you had a chance to review this series
14 of pictures that came with this report--well, as you
15 can see from the date they were taken, they're dated
16 the same day as your inspection by EPA, May 31st,
17 2006, and taken by Lorenzo Sena. Do you see that?

18 A. Yes.

19 Q. My question is, there's a series of photos
20 here that deal with your field to the south of your
21 feedlot, and I just want to make sure--there's been
22 testimony to this effect, that you--that any rill or
23 erosional feature or gully, drainage pathway,
24 whatever it's been called throughout these
25 proceedings, as you see it in these photos, you farm

1 --I'll use the term--farm through that?

2 A. Yes.

3 Q. Do you do that on a yearly basis?

4 A. Yes.

5 Q. Now, there may-- Do you ever do any work to
6 that area to reshape it, or anything?

7 A. Sometimes we shape them a little bit with a
8 box scraper.

9 Q. And that term you just used was what?

10 A. Box scraper.

11 MR. McAFEE: Your Honor, I have no further
12 questions at this time.

13 THE ADMINISTRATIVE LAW JUDGE: Okay. Ready?

14 MR. BREEDLOVE: Just one moment.

15 THE ADMINISTRATIVE LAW JUDGE: Sure. While
16 he's getting ready, just to save some time, I'd like
17 to ask you a couple of questions, Mr. Vos, okay?

18 THE WITNESS: Okay.

19 THE ADMINISTRATIVE LAW JUDGE: I preface
20 these questions for you not to take offense. I have
21 my reasons for wanting to ask these questions. All
22 right?

23 THE WITNESS: Okay.

24 THE ADMINISTRATIVE LAW JUDGE: Very simple.
25 Can you tell me about what your educational

1 background is? How far did you go in your schooling?

2 THE WITNESS: High school; 12 years.

3 THE ADMINISTRATIVE LAW JUDGE: Twelve years.

4 So you have no college degree?

5 THE WITNESS: That is correct.

6 THE ADMINISTRATIVE LAW JUDGE: Do you have
7 any degree in accounting?

8 THE WITNESS: No.

9 THE ADMINISTRATIVE LAW JUDGE: It's just
10 high school?

11 THE WITNESS: Yes.

12 THE ADMINISTRATIVE LAW JUDGE: By the way,
13 that's the reason I said that, I prefaced that. You
14 should not take that as demeaning at all. I just
15 wanted to know what your background was, okay?

16 THE WITNESS: Yes.

17 THE ADMINISTRATIVE LAW JUDGE: I have a lot
18 of respect for you.

19 Counsel, are you ready now?

20 MR. BREEDLOVE: Yes, Your Honor, we are.

21 THE ADMINISTRATIVE LAW JUDGE: Go ahead.
22 Who is doing it?

23 MR. BREEDLOVE: I am.

24 THE ADMINISTRATIVE LAW JUDGE: Go ahead,
25 Mr. Breedlove.

CROSS-EXAMINATION

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BY MR. BREEDLOVE:

Q. Mr. Vos, just a few short questions here. I'm interested in some of your cattle counts. In 2002, how many cattle did you have present?

A. In 2002?

THE ADMINISTRATIVE LAW JUDGE: If you don't know, you can say that, but you can give us an estimate. Tell us how sure you are, too.

A. A couple thousand.

BY MR. BREEDLOVE:

Q. 2003, how many cattle? Just estimates is what I'm curious about.

A. On that June report I said 1,500.

Q. 2004?

A. Two thousand.

Q. And 2005?

A. Twenty-one or twenty-two hundred.

Q. You might guess the next one. 2006?

A. 2006, that's when I believe it says on that report--I said to Lorenzo 2,200.

Q. And then in 2007 you reduced cattle; is that correct?

A. On the 19th.

Q. 19th of what month?

1 A. February.

2 Q. What did you reduce down to?

3 A. Below a thousand, then I went clear to
4 empty, and then I put some cattle back in--not quite
5 empty. In March of 2008 when Steve was out there, I
6 believe I had 90 head.

7 Q. So correct me if I'm wrong, February 19th,
8 2007, you dropped below a thousand head; correct?

9 A. (No audible response.)

10 THE ADMINISTRATIVE LAW JUDGE: You have to
11 say--did you say yes?

12 A. Yes.

13 MR. BREEDLOVE: No further questions, Your
14 Honor.

15 THE ADMINISTRATIVE LAW JUDGE: Anything for
16 you, Mr. McAfee?

17 MR. McAFEE: No, Your Honor.

18 THE ADMINISTRATIVE LAW JUDGE: Okay.
19 Mr. Vos, you can step down, and thank you for your
20 testimony, sir.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 THE ADMINISTRATIVE LAW JUDGE: So we will
24 have some time, then, to talk about scheduling
25 instead of doing it in a conference call--oh, unless

1 EPA has rebuttal testimony.

2 MR. RYAN: No, Your Honor, we have no
3 rebuttal testimony.

4 THE ADMINISTRATIVE LAW JUDGE: So it's fair
5 to state, is it not--I want each counsel to express
6 this--that each side now rests?

7 MR. RYAN: Yes, Your Honor, EPA rests.

8 MR. McAFEE: Yes, Your Honor, the Respondent
9 rests.

10 THE ADMINISTRATIVE LAW JUDGE: Okay. All
11 right. Then let's talk a little bit about
12 scheduling. Just for your benefit, the way this
13 thing works, I think I alluded to it at the beginning
14 of the hearing, we assume that you'll have your
15 transcripts in a couple of weeks. Is that the way it
16 works, Counsel Breedlove?

17 MR. BREEDLOVE: I believe so.

18 THE ADMINISTRATIVE LAW JUDGE: And so we're
19 talking about--let's be conservative here, and let's
20 say that you'll certainly have them by October 10th,
21 right?

22 MR. BREEDLOVE: Yes, sir.

23 THE ADMINISTRATIVE LAW JUDGE: So that's
24 when we start the clock running. What I'd like to do
25 is--I'm asking for trouble for myself, but I would

1 like to try and get this decision out before the end
2 of the year, which is quicker than it usually
3 happens, frankly, but I would like to try and do
4 that.

5 So working from October 10th--and if counsel
6 has things like pre-planned vacations, or other
7 cases, other trials scheduled, you know, that would
8 be factors that you would take into account in
9 telling me when you can reasonably come up with your
10 initial briefs. The initial briefs, they'll be filed
11 simultaneously, as I require them. I don't have them
12 seriatim. So both sides submit them at the same
13 time, and X number of weeks after that you submit
14 reply briefs, response briefs.

15 So what is reasonable? Do you want to speak
16 to that? We're talking about working from the 10th,
17 so start that week on the 12th. How many weeks
18 before you can come up with your--realizing that we
19 had nearly six days of testimony, all but 45 minutes
20 of six days. Do you have any thoughts on this,
21 Mr. McAfee, while they're working on their
22 calculators?

23 MR. RYAN: We're working on our calendar.

24 THE ADMINISTRATIVE LAW JUDGE: Calendar.

25 MR. McAFEE: As am I.

1 MR. BREEDLOVE: The first thing that comes
2 to mind is Mr. McAfee and I are both scheduled for
3 another hearing on December 9th on another feedlot
4 matter in front of you.

5 THE ADMINISTRATIVE LAW JUDGE: Terrific.
6 I'd hoped to come back. I really like Des Moines.
7 If I were a lot younger--but I'm not, unfortunately.
8 I was minding my own business and I got old. I
9 wasn't bothering anybody, and I'll be 59 in January.

10 MR. BREEDLOVE: I guess, Your Honor--I'll go
11 first. In light of the fact that we do have another
12 hearing scheduled for the first part of December,
13 that October 10th day, I'd like at least a month to
14 try to put something together. There will be a lot
15 of conflicts.

16 THE ADMINISTRATIVE LAW JUDGE: By the way,
17 the name of the hearing, is that Acerno (phonetic)?

18 MR. BREEDLOVE: No, Your Honor.

19 THE ADMINISTRATIVE LAW JUDGE: On this
20 calendar--I have a hearing date set?

21 MR. BREEDLOVE: December 9, Your Honor,
22 Poverty Nob Farms, Incorporated.

23 THE ADMINISTRATIVE LAW JUDGE: I do have it
24 written here. I'm sorry. Yes, December 9th. And
25 how many days did we allow for that? Just three,

1 right?

2 MR. BREEDLOVE: There's less issues, Your
3 Honor.

4 THE ADMINISTRATIVE LAW JUDGE: Yes, and I
5 did write it down. Okay. Fine. Three days. You
6 could certainly get in your initial brief before
7 that; right?

8 MR. BREEDLOVE: I'm sorry, Your Honor?

9 THE ADMINISTRATIVE LAW JUDGE: Initial brief
10 can certainly be in?

11 MR. BREEDLOVE: Prior to the hearing?

12 THE ADMINISTRATIVE LAW JUDGE: Yes.

13 MR. BREEDLOVE: Yes, Your Honor.

14 THE ADMINISTRATIVE LAW JUDGE: Give me a
15 day.

16 MR. BREEDLOVE: I was shooting for a month.
17 November 10th, that would be one month after we
18 receive the transcripts.

19 THE ADMINISTRATIVE LAW JUDGE: How does that
20 sound? Sound right?

21 MR. McAFEE: Yes, Your Honor, that sounds
22 good. I have a jury trial scheduled on a nuisance
23 case on November 18th, so, yeah--I just tell you that
24 so--that probably affects me more on the reply
25 briefs, but I'm fine with November 10th. That's a

1 Monday, correct--or whatever the date the Court
2 chooses a month out.

3 THE ADMINISTRATIVE LAW JUDGE: We'll have it
4 due--and that will mean that you send it to me FedEx
5 or UPS, or whatever. It will be postmarked, at
6 least, on that date. Then you know you have to send
7 a copy to the regional hearing clerk. You know about
8 that drill--

9 MR. McAFEE: Yes.

10 THE ADMINISTRATIVE LAW JUDGE: --pursuant to
11 the procedural rule? Okay.

12 I take back my promise of getting a decision
13 out before the end of the year. Obviously, because
14 we're talking about--being fair to EPA and to counsel
15 for Mr. Vos, and allowing for the trials that
16 are--that follow the November 10th date, and then
17 there's that holiday season, as they call it, that's
18 what we have to describe it as, it's a holiday season
19 that week, and then there's New Year's--so I'm quite
20 willing to have these briefs due on December 29th,
21 that would be the reply briefs. So you just won't
22 get the decision as soon. As you understand, you get
23 them in later, you get your decision later. You
24 could make it the 5th of January, or the 29th. How
25 do either of those sound?

1 MR. BREEDLOVE: I would prefer to have it
2 after the New Year, if we could.

3 THE ADMINISTRATIVE LAW JUDGE: I would
4 suspect Mr. McAfee doesn't have a problem with that.

5 MR. McAFF: That would be fine, Your Honor.

6 THE ADMINISTRATIVE LAW JUDGE: All right.
7 So we're talking about January 5th, right?

8 MR. McAFEE: Yes. What day of the week?

9 THE ADMINISTRATIVE LAW JUDGE: That's a
10 Monday. Okay. So that takes care of that, and I
11 know it's hard to wait a long time for a decision,
12 and there's a lot of things I can do in the meantime,
13 and I will.

14 Now, let me just give a few thoughts about
15 the way I like this done. First of all, I do read
16 the briefs closely, but it does no good on either
17 side if the reply brief is just a rehash of what was
18 said in the initial brief.

19 I do want you to be detailed, I do want you
20 to tell me everything you need to tell me, but don't
21 tell me twice. Just cite in the reply brief, if you
22 feel that it's already been stated, just refer me
23 back to that, okay?

24 So the way it's supposed to work, ideally,
25 is the response briefs/reply briefs, they should

1 address subjects brought up in the initial briefs
2 that you take issue with; right? That's what it
3 should be about. Okay.

4 Now, so that's--I'll just give you a few
5 thoughts about what will be helpful to me. How can I
6 express this? I'm reasonably sharp, you know, but I
7 still want you folks to connect the dots. If there's
8 something that's obvious, but important, don't leave
9 it unstated and assume that, "Oh, he'll know that."
10 There's no harm in telling me even the most basic
11 things. I won't be offended by that, okay?

12 Now, I have a few random thoughts to say
13 about this. During the course of the hearing--first
14 of all, I assume that it's still Mr. McAfee's
15 position that, as you said, if I recall correctly in
16 your opening statement, this case is really about, in
17 terms of the Respondent's perspective--well, a couple
18 of things. One is your position that the--there was
19 no compliance due until 7-31-07. That was
20 the--Respondent contends the effective date of the
21 regulation was actually 7-31-2007.

22 MR. McAFEE: Yes, Your Honor, and as I
23 stated in my opening, that date was subsequently
24 extended, after I wrote my answer, to February of '09
25 by EPA regulation.

1 THE ADMINISTRATIVE LAW JUDGE: Okay. I
2 consider that an important issue, and I want you to
3 extensively brief that. Okay?

4 Now, apart from that issue, there's the
5 question of--if we put that aside, the question is,
6 from the Respondent's perspective, and that's without
7 at all denigrating this other issue, because they're
8 not mutually exclusive, they're not mutually
9 exclusive, the Respondent's position, as I understand
10 it, is the only thing they're really fighting about
11 in terms of what we dealt with in the evidence here
12 is whether EPA met its burden of proof and in fact
13 showed that pollutants traveled from Mr. Vos' feedlot
14 to waters of the United States. If I'm wrong about
15 that, tell me now, Mr. McAfee.

16 MR. McAFEE: You are not wrong about that,
17 Your Honor.

18 THE ADMINISTRATIVE LAW JUDGE: Okay. And
19 that means under the applicable burden of proof that
20 EPA faces, that it must be on the basis of the
21 preponderance of the reliable/credible evidence of
22 record. It isn't just the preponderance of the
23 evidence. It's always subsumed it has to be reliable
24 and credible evidence of record.

25 Now, a few other random thoughts. I didn't

1 have time to order these--my nature, probably yours,
2 too, would be to have a linear sort of discussion, so
3 these don't follow that logical pattern, okay? These
4 are things that I'm thinking about because I don't
5 like to play--I'm pretty open about some of my
6 thoughts. So you have the opportunity, based upon
7 what I express, to tell me that I'm in left field, or
8 maybe even in the stands, okay? But I'm still
9 putting the cards up in terms of some of my
10 impressions about the case, and that's meant for the
11 benefit of both sides.

12 One point that I would like EPA to address,
13 and Respondent as well, is absent modelling, absent
14 my accepting modelling, the modelling in this
15 testimony, does EPA concede that it has no case? In
16 other words, is that a critical element of EPA's
17 case? And if it's not a critical element, you'll
18 have to explain to me, if I reject the modelling, how
19 it is that EPA proved its case even without the
20 modelling, all right?

21 Remember, we talked about the importance of
22 case law. If there's any out there where other
23 courts in any forum relevant to this, though, to
24 issues of--Clean Water Act issues, NPDES permits, and
25 so forth, other courts have recognized models, and

1 even better, if possible, these models, but not
2 necessarily just these models, as probative for the
3 purpose for which EPA used these models, that is as
4 enforcement tools to show--not for planning purposes,
5 not for the other purposes that these various models
6 we heard testimony about were used for, but in fact
7 for the purpose of showing that that is a reliable
8 indicator of a violation, all right? So I'll depend
9 upon you to do some good research for that on me--for
10 me. Excuse me.

11 MR. RYAN: I've actually tried such a case,
12 Your Honor, so that's easy.

13 THE ADMINISTRATIVE LAW JUDGE: Okay. But
14 that may not be the only case out there. Who was it
15 in front of?

16 MR. RYAN: Judge Biro.

17 THE ADMINISTRATIVE LAW JUDGE: Of course
18 you'll note if that's on appeal to the EAB.

19 MR. RYAN: It's on appeal to the Eighth
20 Circuit right now, but not on that issue, on a
21 separate issue.

22 THE ADMINISTRATIVE LAW JUDGE: Another
23 notation I have is for any given piece of evidence
24 that is important, be sure you connect the dots
25 between exhibits, tests, reports, and then the

1 conclusions that one must--each side will advocate
2 that I should follow from that, all right?

3 And I also take it--this is another
4 observation that I noted--is that apparently it's
5 Respondent's position that the Respondent did not
6 meet the letter--and I don't mean the letters, the
7 words, but I mean in the figurative sense--the letter
8 of the Iowa Plan's deadlines, but that the IDNR's
9 actions subsequently spoke louder than the literal
10 words in their letters. I take it that's one of the
11 positions. So you'll then, if this is Respondent's
12 perspective, you will trace through how the actions
13 spoke louder than the words, if the words are
14 literally construed to mean what they appeared to
15 mean.

16 You're looking perplexed, Mr. Pollard.

17 Another thought I had that I would like the
18 parties to address is--but I noted this in particular
19 with the Respondent--what would the Respondent have
20 me do? Would I draw no inferences, no reasonable
21 deductions from the modelling ever in a case of
22 discharge, as evidence of discharge? Or is it, as I
23 suspect Respondent's position, that modelling by
24 itself never suffices, that you have to do some sort
25 of actual testing? I hope it's not Respondent's

1 position that EPA would have to camp out, as
2 Mr. Ryan's question suggested to one of the witnesses
3 today.

4 But my more fundamental question is, I
5 guess, whether modelling ever, by itself, establishes
6 violation, or just in this instance as applied here,
7 because of the fundamental inapplicability of the
8 modelling, coupled with the lack of actual testing of
9 any sort.

10 You know, it does seem to me, frankly--this
11 is, again, giving you window to my thoughts--it seems
12 to me testing would not have been that onerous on the
13 part of EPA, and that if EPA had just gone through
14 the testing on one particular day, and those results
15 showed reliably that pollutants traveled from the
16 feedlot to the unnamed tributary, and they were
17 measured, that they were there, I could deduce all
18 kinds of things from that on other days because I'd
19 have that one concrete instance to instruct me about
20 it. I think I'd be in a position where I could make
21 inferences reasonably if I had that hard evidence.
22 And my recollection is that we don't have that. So
23 that's another thought that I had about the case.

24 And, of course, I hope that with the very
25 lengthy references to the different modelling that

1 was used in this case, that if there is some
2 publication by the authors, or analysis in some other
3 source that definitively states that these models are
4 intended for planning purposes, that that's their
5 intent and objectives, then whatever side comes up
6 with that--or if it says they're used for enforcement
7 purposes, to take the EPA's position on that, then
8 you're going to inform the other side of that. And
9 I'll tell you right now, if there's some sort of
10 public record out there, such as a published document
11 or official source, I'm going to allow that be
12 admitted post-hearing because I think it would be
13 instructive, and it would be proper--I don't think
14 it's necessary to have, for example, the right to
15 cross-examine that. If there's information out there
16 in the literature which advises about the scope and
17 impact of this modelling, I should be informed about
18 that.

19 By the way, I think it's important for me to
20 have these comments on the record because then you'll
21 be able to go back and see exactly what I said and
22 that might guide you in your briefs. But that's
23 not--just because I'm giving some random thoughts,
24 that does not in any way restrain what you tell me or
25 what you argue. I'm not suggesting that for a

1 minute.

2 Okay. Almost done here. And, by the way,
3 no one's been shy, everybody has been polite and
4 professional, but, for example, I would expect if
5 counsel for Respondent feels that the two exhibits,
6 one of which was a part of EPA's prehearing exchange,
7 but then was not presented, except through
8 Respondent's Exhibit 19, and then Respondent's
9 Exhibit 20, which was either on the same date or part
10 of that--I want bluntness. If that was something
11 that, from Respondent's perspective, he feels this is
12 something that could be argued as something that is
13 helpful to the Respondent, not helpful to the EPA,
14 you know, tell me about that. Don't assume that I'm
15 going to grasp that, and it may mean nothing. I'm
16 not suggesting that I perceive something nefarious in
17 the fact that those exhibits, EPA-generated exhibits,
18 were not moved for introduction. I don't think that
19 at all. If it does, if you think it does, I want you
20 to tell me that perspective in your initial briefs.

21 Okay. Are there any questions for me?

22 MR. McAFEE: Your Honor, Mr. Breedlove and I
23 spoke briefly in the hall before this afternoon's
24 testimony, and I realized, and, you know, you don't
25 always remember what was said during six days of

1 testimony, but we--I guess I realize that maybe we
2 don't have in the record that Mr. Vos has submitted
3 and received--received is the word I'm looking for--
4 an NPDES permit. That may be in there, may not be.
5 Everything was focused on the construction permit.
6 But the NPDES permit, he does have one.

7 Right, Dan?

8 MR. BREEDLOVE: Yes.

9 MR. McAFEE: We might want to stipulate to
10 that at some point. I'm not tying you into that. We
11 did discuss that, right?

12 MR. BREEDLOVE: Yes.

13 THE ADMINISTRATIVE LAW JUDGE: Is this an
14 NPDES permit that applies for now, presently?

15 MR. McAFEE: Yes.

16 THE ADMINISTRATIVE LAW JUDGE: Make that
17 part of the record. That's part of the history. At
18 least I'd drop it as a footnote.

19 MR. McAFEE: You mean right now?

20 THE ADMINISTRATIVE LAW JUDGE: Or submit it
21 afterwards. What I am going to do, I'm going to
22 ask--give back the exhibit books to the respective
23 parties. I'm going to ask that you make sure, as
24 officers of the Court, that all the exhibits are in
25 there. I did mark on each of my notebooks "Judge's

1 Copy." So you'll make sure--and then mail them to
2 me. And you really can't send it U.S. Mail because
3 they cook the mail. Literally, things come in
4 toasted because of the anthrax scare many years ago.

5 You know, you spent a lot of money, I'm sure
6 you spent a lot of money being here, so this is a
7 relatively small expense. Send it UPS, something
8 ground. Don't FedEx is overnight, or UPS it
9 overnight, or whatever, all right?

10 Do you have another question?

11 MR. McAFEE: No. That was it, Your Honor.

12 THE ADMINISTRATIVE LAW JUDGE: How about
13 EPA?

14 MR. BREEDLOVE: None, Your Honor.

15 THE ADMINISTRATIVE LAW JUDGE: I look
16 forward to seeing the team, perhaps, in December, and
17 thank you all for your very professional
18 presentations on both sides.

19 This hearing will now come to a close.

20 MR. McAFEE: Thank you.

21 MR. RYAN: Thank you, Your Honor.

22 (Proceedings concluded at 4:40 p.m.)
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C E R T I F I C A T E

1
2 I, the undersigned, a Certified Shorthand
3 Reporter of the State of Iowa, do hereby certify that
4 I acted as the official court reporter at the hearing
5 in the above-entitled matter at the time and place
6 indicated;

7 That I took in shorthand all of the
8 proceedings had at the said time and place and that
9 said shorthand notes were reduced to typewriting
10 under my direction and supervision, and that the
11 foregoing typewritten pages are a full and complete
12 transcript of the shorthand notes so taken.

13 Dated at Des Moines, Iowa, this 26th day of
14 September, 2008.

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18 CERTIFIED SHORTHAND REPORTER