

1 which is Page 7 of 16. Would you say that flow path  
2 is cutting through those corn rows?

3 A. Yes, it is.

4 Q. And finally, photo No. 14, you were asked  
5 about that. Let's go back to photo No. 13, I'm  
6 sorry, photo No. 13 which is at Page 14 of 16 of  
7 attachment 4.

8 You were asked about runoff from the  
9 cornfield that might add to the discharge to the  
10 culvert. Do you recall that?

11 A. Yes, I do.

12 Q. Now, if water is running off of the farm  
13 field onto the CAFO, onto the feedlot, would that  
14 make it more or less likely that manure would run off  
15 the feedlot?

16 A. More likely.

17 Q. And how so?

18 A. It would contribute flow to the flow, which  
19 is already emanating from the feedlot.

20 MR. RYAN: Thank you very much. Those are  
21 all the questions I have.

22 RE-CROSS-EXAMINATION

23 BY MR. McAFEE:

24 Q. I believe just a couple of questions on  
25 recross, Mr. Sena.

1           Mr. Sena, regarding the issue of the  
2 cleanliness of the pens--I'll call it that--I believe  
3 you just testified that you believed the cleanliness  
4 of the pens--that they were well kept and clean, and  
5 you testified as to you thought that was related to  
6 the health of the animals?

7           A.     Yes.

8           Q.     Tell me what's the basis for that testimony.

9           A.     It reduces foot disease or other pathogens  
10 passed through manure.

11          Q.     Did Mr. Vos tell you that's why he kept the  
12 pens clean?

13          A.     No.

14          Q.     But keeping the pens clean and free of  
15 manure, is that what you're referring to as far as  
16 pen cleanliness, keeping the manure cleaned up from  
17 the pens?

18          A.     Yes.

19          Q.     And is it your-- It's your conclusion that  
20 that would be for the health of the animals?

21          A.     Yes.

22          Q.     Wouldn't that also impact environmental  
23 compliance in that the manure is cleaned up and not  
24 there for runoff?

25          A.     It's nearly impossible to clean all the

1 manure off the lot.

2 Q. Okay. But your testimony that it's  
3 regarding the health of the animals, doesn't it also  
4 affect environmental compliance when you keep the  
5 manure cleaned up?

6 A. It could.

7 Q. Is that a yes?

8 A. It is a yes, but it's really hard to clean  
9 it all off.

10 Q. Okay. I understand that. What's  
11 the--again, I've already asked.

12 MR. McAFEE: I have no further questions on  
13 that issue. Pardon me, Your Honor.

14 (Short pause.)

15 Q. Mr. Sena, there's been--you were asked a  
16 question about--I believe it's photo 13 and the  
17 drainage.

18 A. Yes.

19 Q. Is it your testimony that the water from the  
20 cornfield that we see in photo 13 would go through  
21 the feedlot?

22 A. It probably doesn't go through the feedlot,  
23 but it washes down to the right-hand side of the  
24 photo into the road-side ditch. Maybe a small  
25 portion does go through the feedlot.

1 Q. I just want to make sure I understand.  
2 You're not testifying that the runoff from the  
3 cornfield itself goes through the feedlot except for  
4 maybe a small portion?

5 A. Yes.

6 MR. McAFEE: I have nothing further, Your  
7 Honor.

8 THE ADMINISTRATIVE LAW JUDGE: Mr. Ryan?

9 MR. RYAN: Nothing further, Your Honor.

10 THE ADMINISTRATIVE LAW JUDGE: Okay. Thank  
11 you, Mr. Sena. I appreciate your testimony. I want  
12 to advise you because you might be called back--  
13 it's possible--not to discuss your testimony with  
14 anybody until this proceeding is completely  
15 concluded.

16 That leads me to another point. I notice  
17 there are several other people in the courtroom here.  
18 I assume some of them are witnesses and not all  
19 observers. It might be an issue--sometimes it is--  
20 where counsel wants witnesses sequestered so that  
21 they don't have the benefit of listening to previous  
22 testimony. If it's not a problem for counsel, then  
23 it's obviously not a problem for me.

24 MR. RYAN: Well, Your Honor, we have--one  
25 witness is in the courtroom right now, and it's our

1 client, Mr. Pollard. He is with us at counsel table,  
2 as I believe we're entitled to. The other people  
3 here are not witnesses.

4 THE ADMINISTRATIVE LAW JUDGE: None of them?

5 MR. RYAN: None of them. I don't know who  
6 the person is in the back. He's not with us.

7 We would actually, however, request that the  
8 witnesses be sequestered. In other words, that  
9 Respondent's witnesses not be allowed in the  
10 courtroom during other testimony; save Mr. Vos, of  
11 course.

12 MR. McAFEE: Your Honor, that's fine with  
13 us. Mr. Vos, as a party, can be here. Mrs. Vos will  
14 not be testifying.

15 THE ADMINISTRATIVE LAW JUDGE: Yes.

16 MR. McAFEE: We will make sure when it comes  
17 to our case that our witnesses remain outside

18 THE ADMINISTRATIVE LAW JUDGE: Okay. Great.  
19 I didn't know the case was that interesting. I saw  
20 someone come in. It's quite a crowd, so to speak.

21 Go ahead. You can step down, sir.

22 (Witness excused.)

23 THE ADMINISTRATIVE LAW JUDGE: Ready for  
24 your next witness, Mr. Ryan--Mr. Breedlove?

25 MR. BREEDLOVE: Can we go off the record for

1 just a second?

2 (Off-the-record discussion.)

3 MR. BREEDLOVE: Next witness is Steve  
4 Pollard.

5 STEPHEN ROBERT POLLARD,  
6 called as a witness by counsel for the Complainant,  
7 being first duly sworn by the Administrative Law  
8 Judge, was examined and testified as follows:

9 THE ADMINISTRATIVE LAW JUDGE: State your  
10 name and spell it as you saw Mr. Sena do, please.

11 THE WITNESS: My name is Stephen Robert  
12 Pollard, S-T-E-P-H-E-N R-O-B-E-R-T P-O-L-L-A-R-D.

13 THE ADMINISTRATIVE LAW JUDGE: Mr. Breedlove,  
14 go ahead.

15 MR. BREEDLOVE: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. BREEDLOVE:

18 Q. What's your educational background?

19 A. I received a Bachelor of Science in  
20 environmental science, and I have also received a  
21 Master of Science in environmental science.

22 Q. For whom do you work?

23 A. I work for the EPA.

24 Q. And how long have you worked for EPA?

25 A. Approximately 10 years.

1 Q. What is your current position with EPA?

2 A. My current position is as the Animal Feeding  
3 Operation and Concentrated Animal Feeding Operation  
4 Coordinator for Region 7.

5 Q. How long have you been in this position?

6 A. Approximately four years.

7 Q. What have been your duties in this position?

8 A. I serve as compliance officer for Clean  
9 Water Act cases, specifically CAFOs and AFOs, AFO  
10 being short for Animal Feeding Operation. I serve as  
11 a coordinator for CAFO/AFO issues related to  
12 compliance and enforcement within the region, and I  
13 work directly with states in the region.

14 Q. Mr. Pollard, in your position as CAFO  
15 coordinator, have you had an opportunity to visit  
16 animal feeding operations?

17 A. Yes, I have.

18 Q. How many animal feeding operations would you  
19 say you've been to?

20 A. I've been to approximately 20.

21 Q. And how many cases have you worked involving  
22 animal feeding operations?

23 A. I've been involved with approximately 80 to  
24 90.

25 Q. In your duties as environmental--as the

1 animal feeding operations coordinator, were you  
2 involved with Mr. Vos' feeding operation?

3 A. Yes, I was the compliance officer for  
4 Mr. Vos' case.

5 Q. Now, following the EPA's inspection of  
6 Mr. Vos' feedlot, what is usually the next step in  
7 regard to analyzing the inspection report?

8 A. The inspection is completed by the  
9 inspector, they'll draft a report, generate the  
10 report and that's transmitted to where I work. And  
11 that is the water enforcement branch of the EPA.

12 I then-- The inspections are assigned to a  
13 compliance officer, and the compliance officer then  
14 reviews that report.

15 Q. And were you assigned the Lowell Vos feedlot  
16 case?

17 A. Yes, I was.

18 Q. The inspection report, Mr. Pollard, did you  
19 transmit a copy of that inspection report to Mr. Vos?

20 A. Yes, we did transmit the report.

21 Q. Did you receive any complaints from Mr. Vos  
22 regarding the findings in that report?

23 A. I received none.

24 Q. Mr. Pollard, after you received the CAFO  
25 inspection report, what is typically the next step in



1 evaluating whether something warrants enforcement  
2 action?

3 A. I reviewed the data gathered, the facts  
4 presented in it, any conclusions that were made by  
5 the inspector again to make a compliance  
6 determination as to whether or not there are any  
7 issues specifically related to violations or  
8 noncompliance with Clean Water Act and begin to  
9 gather additional information that perhaps was not  
10 included in the inspection report.

11 Q. What sort of information that was not  
12 included in the inspection report did you first  
13 evaluate?

14 A. Well, with feedlots the big issue is runoff.  
15 And so one of the things I always like to establish  
16 is topography, where it's located relative to the  
17 surrounding topography. So I look at things like  
18 USGS topographic maps, aerial photographs, and that  
19 type of thing.

20 Q. Did you look at topographic maps in this  
21 instance?

22 A. Yes, I pulled the USGS topos for Mr. Vos'  
23 facility.

24 Q. And are those topo maps included as  
25 Complainant's Exhibit No. 7 and No. 8?

1 A. That's correct.

2 Q. What determinations-- What evaluations did  
3 you make using these topo maps?

4 A. Upon locating Mr. Vos' facility on the  
5 specific quadrangle--in this case Vos' facility is on  
6 two quadrangles--I then basically looked at the  
7 contours that USGS has for that area and assess where  
8 he was relative to the adjacent unnamed tributary.

9 Q. Did you make an evaluation as to the  
10 topography around the Lowell Vos feedlot?

11 A. Yeah. In looking at it, it basically  
12 confirms what the inspection report concluded, that  
13 he's located on top of the ridge or hilltop,  
14 basically, and the runoff is going off that hilltop.

15 Q. Did you make any determinations in regard to  
16 the elevation of the feedlot versus the unnamed  
17 tributary?

18 A. Yes. In looking at the map, they provide  
19 elevations, and I was able to take the contours from  
20 the area within Mr. Vos' boundary of his feedlot and  
21 I also looked at the contours along the unnamed  
22 tributary. By reviewing those, I was able to  
23 determine that there's a slope or a gradient that  
24 exists between his lot and the unnamed tributary.

25 Q. How would you describe that gradient?

1           A.     He's on top of the hill, and the tributary  
2 is at a much lower elevation. And runoff is going  
3 to--or runoff will flow downhill towards the unnamed  
4 tributary.

5           Q.     Did you make any determinations as to what  
6 sort of elevation changes there were between the  
7 feedlot and Mr. Vos' place?

8           A.     From looking at it, it varies depending on  
9 what point of the unnamed tributary you look at. I  
10 would say it was a 50- to 60-foot decrease in  
11 elevation from his feedlot to portions of the unnamed  
12 tributary.

13          Q.     Thank you. Mr. Pollard, I would like to  
14 focus your attention to Complainant's Exhibit No. 1.  
15 Can you please identify for the record--please  
16 identify Complainant's Exhibit No. 1.

17          A.     Complainant's Exhibit No. 1 is an aerial  
18 photograph that I utilized, basically seeing what the  
19 topographic map was showing and what Lorenzo's report  
20 was showing. And I wanted to begin to assess what  
21 that was--what that looked like at other times of the  
22 year or other years.

23                 So I looked at this photograph. This is  
24 a--Mr. Vos' feedlot and the unnamed tributary and  
25 Elliot Creek in the year 2002.

1 Q. And from whom did you obtain this image?

2 A. This image was compiled and taken by the  
3 Iowa Geological Survey.

4 Q. Mr. Pollard, in your daily work do you  
5 typically analyze aerial photography?

6 A. I use aerial photography in all of my CAFO  
7 cases.

8 Q. Have you received any training in aerial  
9 photography interpretation?

10 A. Yes, I have.

11 Q. How many photographs have you evaluated or  
12 analyzed in your 10 years at EPA?

13 A. I would say it's thousands.

14 Q. Thank you. Again, focusing our attention on  
15 Complainant's Exhibit No. 1--

16 MR. BREEDLOVE: Your Honor, pursuant to the  
17 prehearing conference we had, EPA went ahead and had  
18 Mr. Pollard mark some things on Complainant's Exhibit  
19 No. 1 Pollard, which is included in the exhibits.

20 BY MR. BREEDLOVE:

21 Q. Mr. Pollard, could I focus your attention on  
22 Complainant's Exhibit 1 Pollard.

23 A. Yes.

24 Q. Could you please describe what the yellow  
25 arrows are described in this photograph.

1           A.     Yellow arrows indicate the direction of  
2 channelized flow paths--the direction of flow related  
3 to the observed channelized flow paths that I saw in  
4 the image.

5           Q.     Did you place these yellow markings on this  
6 exhibit?

7           A.     Yes, I did.

8           Q.     Mr. Pollard, did you come to any conclusions  
9 regarding the flow paths?

10          A.     Well, in analyzing the aerial photograph  
11 it's clear that channelized flow exists coming off  
12 the lot from multiple forces of Mr. Vos' facility.  
13 And I basically identified those points and the  
14 channelized flow paths on the photo.

15          Q.     Mr. Pollard, do the yellow dots--what do  
16 they signify in Complainant's Exhibit No. 1 Pollard?

17          A.     Those are the points at which runoff leaves  
18 the feedlot and enters the channelized flow paths.

19          Q.     Did you place the yellow dots on the flow  
20 path?

21          A.     Yes, I did.

22          Q.     Did you draw any conclusions in regard to  
23 the flow paths on this map versus perhaps the  
24 analyses in the inspection report?

25          A.     It reaffirms the conclusions that the

1 inspection report had made regarding discharge points  
2 coming off the lot, predominantly the northwest--the  
3 north, the south.

4 MR. BREEDLOVE: Your Honor, at this time I'd  
5 like to request that Complainant's Exhibit No. 1  
6 Pollard be moved into the record.

7 THE ADMINISTRATIVE LAW JUDGE: I didn't  
8 think that was in dispute.

9 MR. BREEDLOVE: These were new markings that  
10 weren't in the prehearing exchange.

11 MR. McAFEE: No objection.

12 THE ADMINISTRATIVE LAW JUDGE: All right.  
13 Complainant's Exhibit 1 is admitted which includes  
14 the markings. There's no other version without  
15 markings, correct, other than the prehearing exchange  
16 which is not part of this record anyway; correct?

17 MR. BREEDLOVE: Your Honor, included in the  
18 exhibits you have there is an unmarked copy and then  
19 also a marked copy. So I believe in the binder you  
20 have there you have Complainant's Exhibit 1, and then  
21 Complainant's Exhibit 1 Pollard has been marked with  
22 the markings. There is a clean copy and marked copy.

23 THE ADMINISTRATIVE LAW JUDGE: I'm sorry.  
24 Okay. Thank you.

25

1 (Complainant's Exhibit 1 Pollard  
2 was received in evidence.)

3 BY MR. BREEDLOVE:

4 Q. Mr. Pollard, in Complainant's Exhibit 2  
5 Pollard, Complainant's Exhibit 3 Pollard,  
6 Complainant's Exhibit 4 Pollard and Complainant's  
7 Exhibit 6 Pollard, each of these aerial photographs,  
8 did you place yellow markings on these exhibits?

9 A. Yes, I did.

10 Q. Okay. What was the intent in placing these  
11 markings on these exhibits?

12 A. Again, it was to document the channelized  
13 flow paths that I was able to observe from the aerial  
14 photograph, as well as document the direction that  
15 those flow paths went in as they flowed to the  
16 unnamed tributary.

17 Q. For each of those exhibits we just  
18 described?

19 A. That is correct.

20 Q. Mr. Pollard, please focus your attention on  
21 Complainant's Exhibit 2 Pollard.

22 A. Yes.

23 Q. Please identify this exhibit for the Court.

24 THE ADMINISTRATIVE LAW JUDGE: We're on 2  
25 Pollard?

1 MR. BREEDLOVE: Yes, Your Honor.

2 A. This is the same area as Complainant's  
3 Exhibit 1 Pollard and is a 2004 aerial photograph of  
4 that area.

5 BY MR. BREEDLOVE:

6 Q. And from whom did you obtain this aerial  
7 image?

8 A. That image came from the U.S. Department of  
9 Agriculture.

10 Q. And, Mr. Pollard, could you please describe  
11 the yellow arrows to the north in that Complainant's  
12 Exhibit 2 Pollard.

13 A. These arrows identify the same channelized  
14 flow path that existed in the previous photo, Exhibit  
15 1, again shows or documents the direction of  
16 channelized flow coming off Mr. Vos' feedlot down to  
17 the unnamed tributary.

18 Q. Please describe the yellow markings to the  
19 southern portion of the lot on Complainant's Exhibit  
20 2.

21 A. These marks identify--there are five points  
22 from the feedlot that appear to be the points of  
23 discharge or the points at which runoff leaves the  
24 site and then flows into the channelized flow path  
25 south of the facility, which then flows down to the



1 unnamed tributary.

2 Q. Did you compare these with the aerial  
3 photographs from Mr. Lorenzo's inspection in the 2002  
4 aerial photograph?

5 A. I reviewed both of them, yes.

6 Q. And what were your conclusions in this  
7 regard to comparisons?

8 A. The drainage patterns that I'm observing in  
9 this photograph is the same drainage patterns that  
10 were documented in the inspection report.

11 MR. BREEDLOVE: Your Honor, move for  
12 Complainant's Exhibit 2 Pollard to be moved into the  
13 record.

14 MR. McAFEE: No objection.

15 THE ADMINISTRATIVE LAW JUDGE: Okay. It's  
16 admitted, Complainant's Exhibit 2 Pollard.

17 (Complainant's Exhibit 2 Pollard  
18 was received in evidence.)

19 BY MR. BREEDLOVE:

20 Q. Mr. Pollard, focus your attention on  
21 Complainant's Exhibit 3 Pollard.

22 A. Okay.

23 Q. Can you please identify this exhibit for the  
24 Court.

25 A. This is an aerial photograph of Mr. Vos'

1 feedlot, unnamed tributary to Elliot Creek that was  
2 taken in 2005.

3 Q. Mr. Pollard, did you analyze the flow paths  
4 in this exhibit--

5 A. Yes.

6 Q. --Complainant's Exhibit No. 3 Pollard?

7 A. Yes.

8 Q. What were your conclusions in regard to this  
9 exhibit?

10 A. Same conclusions as before. This one  
11 actually is clearer and it's evidence of the  
12 channelized flow paths. The arrow indicates the  
13 direction of flow in those channelized flow paths,  
14 and there are discharges from the same points from  
15 Mr. Vos' feedlot occurring.

16 Q. Mr. Pollard, you mentioned that this was--in  
17 your testimony just now you mentioned that this one  
18 was clearer. Can you please describe what you meant  
19 by "this one is clearer."

20 A. The evidence-- If you look at the runoff  
21 coming off the southern feedlot, the southern portion  
22 of the feedlot, the channelized flow path emanating  
23 from the point just below the name "Lowell" in  
24 "Lowell Vos feedlot," it's clear that there's a  
25 channelized flow path coming off of there flowing

1 south and then turning and flowing in a westerly  
2 direction.

3 MR. BREEDLOVE: Thank you, Mr. Pollard.  
4 Move for Complainant's Exhibit 3 to be moved into  
5 evidence.

6 MR. McAFEE: No objection.

7 THE ADMINISTRATIVE LAW JUDGE: Okay.  
8 Complainant's Exhibit 3 Pollard admitted.

9 (Complainant's Exhibit 3 Pollard  
10 was received in evidence.)

11 THE ADMINISTRATIVE LAW JUDGE: Mr. Pollard,  
12 I take it when you just referred to that channel, the  
13 runoff being clearer, you actually didn't mark the  
14 yellow lines on the channel. The channel is below  
15 those yellow arrows; correct?

16 THE WITNESS: That's correct.

17 THE ADMINISTRATIVE LAW JUDGE: Go ahead.

18 BY MR. BREEDLOVE:

19 Q. Mr. Pollard, on all the exhibits that we've  
20 looked at in regard to your yellow lines, what was  
21 the purpose in placing the lines just off of the  
22 actual flow paths?

23 A. It was to allow for the actual flow path to  
24 be observed, the image. If I put the line on there,  
25 you wouldn't be able to see the channelized flow

1 path.

2 MR. BREEDLOVE: Thank you, Mr. Pollard.

3 Complainant's Exhibit 3 Pollard was moved  
4 into evidence?

5 THE ADMINISTRATIVE LAW JUDGE: Yes.

6 MR. BREEDLOVE: Thank you.

7 BY MR. BREEDLOVE:

8 Q. Turn to Complainant's Exhibit No. 4 Pollard,  
9 please.

10 A. Okay.

11 Q. Could you please identify this Complainant's  
12 Exhibit 4 Pollard for the record.

13 A. Complainant's Exhibit 4 Pollard is the same  
14 aerial photograph as the previous exhibits I've  
15 discussed. It includes the Lowell Vos feedlot, the  
16 unnamed tributary and Elliot Creek.

17 Q. Mr. Pollard, when you said it was the same  
18 image, did you mean it was taken in the same year?

19 A. No, I'm sorry, this was taken in 2006.

20 Q. Did you mean it was the same area?

21 A. Same area, yes; that's correct.

22 Q. Can you please explain to us the yellow  
23 markings on Complainant's Exhibit No. 4 Pollard.

24 A. Again, they are arrows indicating the  
25 channelized flow paths leaving Mr. Vos' feedlot and

1 flowing to the unnamed tributary.

2 Q. Did you come to any conclusions in reviewing  
3 this Complainant's Exhibit No. 4 Pollard?

4 A. Again, it provides clear evidence in the  
5 form of channelized flow paths coming directly from  
6 Mr. Vos' feedlot and flowing down to the unnamed  
7 tributary. Any runoff leaving Mr. Vos' feedlots will  
8 enter those flow paths.

9 MR. BREEDLOVE: Your Honor, I move for  
10 Complainant's Exhibit No. 4 Pollard to be moved into  
11 evidence.

12 MR. McAFEE: No objection.

13 THE ADMINISTRATIVE LAW JUDGE: 4 Pollard is  
14 admitted.

15 (Complainant's Exhibit 4 Pollard  
16 was received in evidence.)

17 BY MR. BREEDLOVE:

18 Q. Mr. Pollard, one last aerial photograph to  
19 look at now, Complainant's Exhibit No. 6 Pollard.

20 A. Okay.

21 Q. Mr. Pollard, can you please describe the  
22 marks you put on this exhibit.

23 A. Again, I placed the yellow arrows  
24 designating direction of flow from Mr. Vos' feedlot  
25 through channelized flow paths that flow down to the

1 unnamed tributary.

2 Q. Did you draw any conclusions from analyzing  
3 this aerial photograph?

4 A. Yes.

5 Q. What are those conclusions?

6 A. Again, there are seven points for which  
7 runoff is exiting the site entering channelized flow  
8 paths. From those seven points runoff will flow and  
9 enter the unnamed tributary.

10 MR. BREEDLOVE: Could we please move  
11 Complainant's Exhibit No. 6 Pollard into the record.

12 MR. McAFEE: No objection.

13 THE ADMINISTRATIVE LAW JUDGE: Complainant's  
14 Exhibit No. 6 Pollard is admitted.

15 (Complainant's Exhibit 6 Pollard  
16 was received in evidence.)

17 BY MR. BREEDLOVE:

18 Q. Mr. Pollard, having reviewed what looks to  
19 be approximately five years' worth of aerial  
20 photographs, did you make any conclusions involving  
21 runoff at Mr. Vos' facility?

22 A. Yes, I did.

23 Q. And what were those conclusions?

24 A. I concluded that channelized flow paths  
25 exist continuously--

1 Q. Continuously from year to year or over the  
2 entire period?

3 A. From year to year. --that originate at  
4 Mr. Vos' feedlot and flow down to--they exist between  
5 Mr. Vos' feedlot and the unnamed tributary.

6 Q. Thank you. Have you ever been to Mr. Vos'  
7 feedlot?

8 A. Yes, I have.

9 Q. How many times have you been there?

10 A. I've been there three times.

11 Q. When was the first time you went to Mr. Vos'  
12 feedlot?

13 A. The first time was in December of  
14 '06--December of 2006.

15 Q. What was the purpose of that visit?

16 A. The purpose of that visit was to gather  
17 additional information related to the unnamed  
18 tributary and Elliot Creek. I actually didn't go  
19 onto Mr. Vos' property.

20 Q. So how did you evaluate the unnamed  
21 tributary and Elliot Creek?

22 A. I went along the roads at the point at which  
23 the unnamed tributary crossed the road and assessed  
24 the stream at that point, took photographs.

25 Q. Mr. Pollard, could you focus your attention

1 on Complainant's Exhibit 28.

2 A. Okay.

3 Q. Could you please identify this exhibit for  
4 the record.

5 A. This is a photo index from the March 11, '08  
6 inspection.

7 Q. Did you take these photographs?

8 A. I did.

9 MR. BREEDLOVE: Your Honor, may I approach  
10 the bench?

11 THE ADMINISTRATIVE LAW JUDGE: Sure. Let's  
12 go off the record.

13 (Off-the-record discussion.)

14 THE ADMINISTRATIVE LAW JUDGE: Back on the  
15 record.

16 MR. BREEDLOVE: Thank you, Your Honor.

17 BY MR. BREEDLOVE:

18 Q. Mr. Pollard, you can have a seat--

19 A. Okay.

20 Q. --so you can look at the exhibits.

21 Mr. Pollard, I would like you to focus your attention  
22 on photograph No. 1 of Complainant's Exhibit No. 24.

23 A. Okay.

24 THE ADMINISTRATIVE LAW JUDGE: You don't  
25 mean Exhibit 28, you mean 24?



1 MR. BREEDLOVE: Exhibit 24, photograph No. 1.

2 THE ADMINISTRATIVE LAW JUDGE: Okay.

3 BY MR. BREEDLOVE:

4 Q. Mr. Pollard, could you please identify  
5 what's marked as Complainant's Exhibit No. 24, photo  
6 1.

7 A. Photograph No. 1 of the Complainant's  
8 Exhibit 24 is a photograph of Elliot Creek along  
9 100th Street.

10 Q. Can you please identify the location on the  
11 photo index that's attached to Complainant's Exhibit  
12 24.

13 A. On the photo index I indicated the position  
14 of photograph 1 by the No. 1 on the photograph index  
15 west of Mr. Vos' feedlot.

16 Q. Okay. Mr. Pollard, on the photo index you  
17 have a black arrow associated with each of the  
18 circles with the number in it. Would you please  
19 describe what that black arrow indicates.

20 A. The black arrow indicates the approximate  
21 direction I was standing when I took the photo.

22 Q. Is that applicable to each of the numbers in  
23 the photo index?

24 A. Yes. The dots are approximate locations,  
25 again. I would say they're not the exact point at

1 which I stood when I shot the photo. It's to  
2 establish the general position or area that I was in  
3 when I took them.

4 Q. Mr. Pollard, focusing on photo 1 of  
5 Complainant's Exhibit No. 24, approximately how far  
6 from the stream were you when you took this photo?

7 A. Fifteen, twenty feet.

8 Q. What was the direction of flow?

9 A. The direction is away from me in this  
10 picture. It was flowing southwest.

11 Q. What was the approximate width of the  
12 stream?

13 A. The portion that contained water was  
14 probably four to five feet wide.

15 Q. Did it have a noticeable velocity?

16 A. It was flowing the day I was there, yes.

17 Q. Mr. Pollard, I would like to focus your  
18 attention on photo No. 2 of Complainant's Exhibit  
19 No. 24.

20 A. Okay.

21 Q. Show the location of photo No. 2 on the  
22 photo index.

23 A. Photograph No. 2 is designated by the No. 2  
24 located on the photo index and was located southwest  
25 of Mr. Vos' feedlot.

1 Q. Approximately how far from the stream were  
2 you when you took this photo?

3 A. Again, I was probably--this was probably 10  
4 to 15 feet.

5 Q. What was the direction of flow?

6 A. The flow was going away from me in this  
7 photo. It's basically flowing east. I'm sorry,  
8 basically flowing west.

9 Q. Approximate width?

10 A. I would say the stream or the flowing water  
11 was probably two to three feet wide.

12 Q. Approximate depth?

13 A. Approximately a foot.

14 Q. Were there any other characteristics that  
15 you found notable about the stream?

16 A. It definitely had a defined bed and bank,  
17 vegetation present and water was flowing.

18 Q. Okay. Mr. Pollard, focus your attention on  
19 photograph No. 3, Complainant's Exhibit No. 24.

20 A. Okay.

21 Q. Again, can you please identify the location  
22 of the photo on the photo index.

23 A. Photograph No. 3 is identified on the photo  
24 index by the number 3.

25 Q. Approximately how far from the stream were

1 you when you took this photo?

2 A. Ten, fifteen feet.

3 Q. Can you note the direction of flow?

4 A. The flow is towards me in this photo. This  
5 is basically myself turning around from photo No. 2  
6 and taking a picture of the unnamed tributary coming  
7 towards me.

8 Q. The approximate width of the stream?

9 A. Two to three feet.

10 Q. Approximate depth?

11 A. It was around a foot.

12 Q. Was there noticeable velocity?

13 A. The water was flowing, yes.

14 Q. Any other noticeable characteristics?

15 A. Again, clear bed and bank and vegetation and  
16 flow.

17 Q. Mr. Pollard, I would like to focus your  
18 attention on photographs No. 2 and No. 3. How many  
19 times have you been to these streams?

20 A. I've been to this point three times.

21 Q. Okay. Can you give us the approximate  
22 dates, the months at which you investigated this  
23 stream.

24 A. This visit was in December of '06. I was  
25 there in March 2008 and I was again there in July of

1 2008.

2 Q. Was there flow in the unnamed tributary  
3 every time you visited this stream?

4 A. Yes, there was.

5 Q. Thank you. I'd like to focus your attention  
6 on Complainant's Exhibit 24, photo 4.

7 A. Okay.

8 Q. Can you please identify that for the record.

9 A. This photograph is a photograph of Elliot  
10 Creek taken in--

11 Q. I'm sorry.

12 A. --taken at 110th Street.

13 Q. How far were you from the stream when you  
14 took this photo?

15 A. I was a pretty good ways from here. I would  
16 say I was probably 50, 60 feet from the stream.

17 Q. Did you take this photo from the car?

18 A. Yeah, I was in the car when I took this.

19 Q. Can you please identify photo No. 4 from  
20 Complainant's Exhibit No. 24 on the photo index.

21 A. Photo 4 is located in the lower left corner.  
22 It is identified by the number 4 on the photo index.

23 Q. Mr. Pollard, what was the direction of flow  
24 in this photo?

25 A. In this photo flow was flowing towards me as

1 I took the photo, which would have been a  
2 southwesterly--more southerly direction.

3 Q. And what would you estimate the width of the  
4 stream to be?

5 A. The portion that contained water was  
6 probably two to three feet wide.

7 Q. Were you able to estimate the depth?

8 A. Not from that point.

9 Q. Was there noticeable velocity?

10 A. It was flowing.

11 Q. Any other characteristics you found notable?

12 A. There's substantial channelization that has  
13 occurred at this portion of Elliot Creek. You can  
14 definitely define bed and bank here.

15 Q. Okay. Moving on to photo No. 5 in  
16 Complainant's Exhibit No. 24, this is the last one in  
17 this exhibit. But could you please identify photo  
18 No. 5 from Complainant's Exhibit No. 24.

19 A. Could you repeat that.

20 Q. Please identify photo No. 5 of Complainant's  
21 Exhibit 24.

22 A. Photograph No. 5 is Elliot Creek again along  
23 110th Street. I'm now facing south, basically turn  
24 around from the position I was facing in photograph  
25 4, and I again took another picture of Elliot Creek.

1 Q. Would you locate that on the photo index to  
2 Complainant's Exhibit No. 24.

3 A. Photograph 5 is identified by the number 5  
4 located in the lower left corner of the photograph  
5 index.

6 Q. Please describe the direction of flow in  
7 this photograph.

8 A. It's flowing away from me in the photograph,  
9 and it's continuing to flow in the south,  
10 southwesterly direction.

11 Q. Can you describe the approximate width of  
12 the stream.

13 A. Again, it was two to three feet.

14 Q. Were you able to estimate the depth?

15 A. No, I was not.

16 Q. Was there a noticeable velocity of the  
17 stream at this point?

18 A. It was flowing on this side of the road, as  
19 well.

20 Q. Any other characteristics you found notable?

21 A. Again, deep channelization, obvious bed and  
22 bank, presence of vegetation.

23 Q. Okay. Mr. Pollard, I'd like to focus your  
24 attention on Complainant's Exhibit No. 28.

25 MR. BREEDLOVE: Your Honor, once again we

1 have a version of photographs here where Mr. Pollard  
2 has marked them.

3 THE ADMINISTRATIVE LAW JUDGE: Good. Okay.

4 MR. BREEDLOVE: We're looking at--I'd like  
5 to look at Complainant's Exhibit No. 28 Pollard. My  
6 plan is to run through them and then enter them all  
7 into evidence--

8 THE ADMINISTRATIVE LAW JUDGE: Okay.

9 MR. BREEDLOVE: --barring no objection from  
10 counsel.

11 BY MR. BREEDLOVE:

12 Q. Mr. Pollard, are you looking at  
13 Complainant's Exhibit No. 28 Pollard?

14 A. Yes, I am.

15 Q. Can you please identify this exhibit for the  
16 Court.

17 A. Exhibit 28 Pollard is--are the photos along  
18 with the photo index of photos I took while I was on  
19 an EPA site visit inspection on March 11, 2008.

20 Q. And what was the purpose of this inspection?

21 A. The purpose of this inspection was to  
22 further document channelized flow paths between  
23 Mr. Vos' feedlot and the unnamed tributary.

24 Q. Mr. Pollard, I'd like to focus on photograph  
25 No. 2 of Complainant's Exhibit 28 Pollard.



1 A. Okay.

2 Q. Back up for one second. Did you place all  
3 the marks on Complainant's Exhibit 28 Pollard?

4 A. Yes, I did.

5 Q. What was the purpose of placing these marks  
6 within this exhibit?

7 A. There were two types of marks placed on  
8 these. One was to indicate direction of flow of the  
9 channelized flow paths, and then there are marks that  
10 indicate the direction or location of the unnamed  
11 tributary.

12 Q. Mr. Pollard, looking at photo 2 of  
13 Complainant's Exhibit 28 Pollard, could you please  
14 describe what we're seeing here in the photo No. 2.

15 A. Photograph No.. 2 is the unnamed tributary  
16 immediately west of Mr. Vos' feedlot.

17 Q. Would you please identify that on the photo  
18 index.

19 A. It's located in basically the upper left  
20 quadrant of the photo and is identified by the No. 2.

21 Q. Now, you've testified that we've got--that  
22 the yellow lines indicate a flow path. Can you  
23 please describe the characteristics of that flow  
24 path.

25 A. In this photo there is a channelized flow

1 path that's coming from the left of the photo moving  
2 to the right and down into the unnamed tributary.  
3 This is a channelized flow path that I observed  
4 coming from the terrace that is located along the  
5 western side of Mr. Vos' feedlot.

6 Q. Mr. Pollard, can you focus your attention on  
7 photo No. 3 on Complainant's Exhibit Pollard 28.

8 A. Okay.

9 Q. Please describe what you observed when you  
10 took this photograph.

11 A. This again is a photo of the same  
12 channelized flow path from photo No. 2 that I am now  
13 facing east and looking at it from an easterly  
14 direction.

15 Q. Again, where did this flow path originate?

16 A. This flow path originated from the terrace,  
17 the base of the terrace.

18 Q. Did you have an unobstructed view from this  
19 location, from the terrace to this point?

20 A. Yes, I did.

21 Q. Mr. Pollard, I'd like to focus your  
22 attention on photograph No. 5 in Complainant's  
23 Exhibit No. 28.

24 A. Which exhibit? I didn't hear that.

25 Q. Exhibit No. 28 Pollard, photo No. 5.

1           A.     Photo No. 5.

2           Q.     Okay. Mr. Pollard, would you please  
3 describe what you observed when you took this  
4 photograph.

5           A.     This photograph was taken standing at the  
6 extreme northwest corner of Mr. Vos' feedlot, and it  
7 is a photo of the channelized flow coming out of that  
8 point in his feedlot and flowing westerly down to the  
9 unnamed tributary.

10          Q.     So pointing at or using the photo index,  
11 could you please describe how photograph No. 5  
12 relates to photograph No. 2 and 3 that you described  
13 earlier.

14          A.     Photograph No. 5 is identified on the index  
15 in the upper left quadrant and is identified by the  
16 No. 5, and it is showing the channelized flow path  
17 from the lot down to the unnamed tributary.  
18 Photographs 2 and 3 were taken of a photograph coming  
19 from the terrace.

20                   THE ADMINISTRATIVE LAW JUDGE: That word  
21 you're saying is terrace, T-E-R-R-A-C-E?

22                   THE WITNESS: That's correct.

23 BY MR. BREEDLOVE:

24          Q.     So the flow path you identified in  
25 photographs 3 and 4 is a different flow path than you

1 identified in photographs 5 and 6?

2 A. The photographs identified in 2 and 3.

3 Q. My apologies. Photographs 2 and 3 of  
4 Complainant's Exhibit 28 Pollard, these photographs  
5 you've testified to, are these all of the same flow  
6 path or are they separate?

7 A. No, these are separate. The photographs in  
8 2 and 3 were coming from the terrace, and photograph  
9 5 was coming from the corner of the feedlot.

10 Q. Focusing your attention on photograph No. 6  
11 in Complainant's Exhibit No. 28 Pollard, would you  
12 please describe what you observed in this photograph.

13 A. Photograph No. 6 is taken at the same point  
14 as photograph No. 5 was taken. I have now turned and  
15 am facing in a northeasterly or easterly direction,  
16 and I'm looking into the pen. The arrows indicate  
17 the channelized flow within the pen that is flowing  
18 towards me in this picture and ultimately out of the  
19 picture and into the view that we had in photo 5.

20 Q. Where did the flow path that you've  
21 documented in photograph No. 6, where did that  
22 originate?

23 A. That originated within the feedlot or in  
24 this pen.

25 Q. And where did it terminate?

1 A. It terminated in the unnamed tributary.

2 Q. Thank you. Mr. Pollard, did--

3 THE ADMINISTRATIVE LAW JUDGE: I'm looking  
4 at photograph No. 6. You see that fencing above the  
5 top third there's not as high as the barbed wire, but  
6 you see this fencing along there; right?

7 THE WITNESS: That's correct.

8 THE ADMINISTRATIVE LAW JUDGE: Is that the  
9 northwest border of the Lowell Vos feedlot? In other  
10 words, on the other side of that fence is that  
11 someone else's property or at least it's not part of  
12 the feedlot?

13 THE WITNESS: If I understand you  
14 correctly--

15 THE ADMINISTRATIVE LAW JUDGE: You see the  
16 row of fencing there on photo 6?

17 THE WITNESS: Yes.

18 THE ADMINISTRATIVE LAW JUDGE: Describe  
19 what's on one side where you have yellow arrows and  
20 then what is on the other side.

21 THE WITNESS: The other side is 100th  
22 Street. Right here on this map, this is the street  
23 right here (indicating).

24 MR. BREEDLOVE: Let the record reflect that  
25 Mr. Pollard has pointed out the street going east-

1 west just to the north of the feedlot.

2 THE WITNESS: The road then slopes down  
3 towards the pens, and there is a fence.

4 THE ADMINISTRATIVE LAW JUDGE: Okay. So the  
5 road is elevated, and then you have a slope down from  
6 the road to that fence line; is that right?

7 THE WITNESS: That's correct.

8 THE ADMINISTRATIVE LAW JUDGE: Okay.

9 BY MR. BREEDLOVE:

10 Q. Mr. Pollard, looking to photograph No. 6 of  
11 Complainant's Exhibit 28 Pollard, now focusing on the  
12 southwesterly--southwestern corner of the feedlot,  
13 can you please describe what you observed when you  
14 took photograph No. 14.

15 A. Photograph 14 was taken in the southwest  
16 corner of Mr. Vos' feedlot. It is documenting the  
17 channelized flow path that is exiting the lot from  
18 that position and flowing out into the cornfield.

19 Q. And that position would be designated as  
20 photograph 14 on the photo index?

21 A. Yes. No. 14 on the photograph--on the  
22 photograph index indicates the position of this  
23 photo.

24 Q. , Now, Mr. Pollard, would you please look at  
25 photograph No. 15, Complainant's Exhibit No. 28.

1 A. Okay.

2 Q. Could you please describe what you observed  
3 when you took this photograph.

4 A. Photograph 15 is standing at the base of the  
5 terrace that goes along the western side of Mr. Vos'  
6 feedlot. Photograph 14, the channelized flow, flows  
7 down to that terrace and ultimately over the top of  
8 that terrace and discharged out of the terrace at the  
9 point at which I took photograph 15.

10 Q. So based on your observations while you were  
11 at the site, was this terrace acting as a permanent  
12 boundary to runoff from Mr. Vos' feedlot?

13 A. No, it was not.

14 Q. Did it restrict flow from the feedlot?

15 A. It did appear to be restricting the flow to  
16 a certain extent, and then it ultimately overtopped  
17 the terrace and flowed on into photo 15.

18 Q. What observations did you make to confirm  
19 that it overtopped the berm?

20 A. I was able to observe channelized flow  
21 coming over the terrace. I observed channelized flow  
22 paths going over the terrace.

23 Q. Continuous from the corner of the feedlot?

24 A. Yes.

25 THE ADMINISTRATIVE LAW JUDGE: So the

1 terrace was behind you, it's not in the photo?

2 THE WITNESS: That's correct. I'm standing  
3 directly at the base of it.

4 BY MR. BREEDLOVE:

5 Q. Momentarily skipping over photograph 16 and  
6 17, Mr. Pollard, I would like you to look at  
7 photograph 18 on Complainant's Exhibit 28 Pollard.

8 A. Okay.

9 Q. Please, could you identify this photograph  
10 on the photo index.

11 A. This is another discharge point coming from  
12 Mr. Vos' feedlot. When I came out I wanted to  
13 basically ground trip what I had been seeing in those  
14 aerial photos.

15 So I went to the four--I went to--well, it  
16 would have been the seven points that I had concerns  
17 about. Photograph 18 is one of those points. It is  
18 located on the southern end of Mr. Vos' feedlot, and  
19 on the index it's identified as photograph 18.

20 And again, it's channelized--it documents  
21 channelized flow coming off of the feedlot. The  
22 yellow arrows again indicate the direction that that  
23 flow was taking--that that flow path took as it left  
24 the feedlot.

25 Q. Now, in photograph No. 19, Mr. Pollard, from



1 Complainant's Exhibit 28 Pollard--

2 A. Okay.

3 Q. --please describe what you observed when you  
4 took the photograph No. 19 of that exhibit.

5 A. Photograph 19 identified by the No. 19 on  
6 the index again documents channelized flow that was  
7 occurring in the field south of the feedlot. I was  
8 trying to document the channelized flow that was in  
9 existence south of the feedlot when I took this  
10 photo.

11 Q. Mr. Pollard, can you describe what we see in  
12 this photograph. It looks like there's accumulation  
13 of water; is that correct?

14 A. Yes, I was there in March of 2008. That's  
15 actually ice that we're seeing. It had been cold or  
16 was below freezing when I was there, and that is  
17 frozen liquid.

18 Q. Mr. Pollard, I see there's also in black  
19 letters and an arrow a mark on this exhibit that says  
20 "Lowell Vos feedlot." Do you see that?

21 A. Yes, I do.

22 Q. Did you place this on this exhibit?

23 A. Yes, I did place that on the exhibit. That  
24 was there to identify the position of Lowell Vos  
25 feedlot in the photo.

1 Q. Now, Mr. Pollard, let's turn ourselves back  
2 to No. 16 and 17, photographs 16 and 17 of  
3 Complainant's Exhibit No. 28 Pollard.

4 THE ADMINISTRATIVE LAW JUDGE: Just to speak  
5 up, counsel, which photographs, counsel?

6 MR. BREEDLOVE: Photograph 16 of  
7 Complainant's Exhibit 28 Pollard.

8 THE ADMINISTRATIVE LAW JUDGE: Okay.  
9 BY MR. BREEDLOVE:

10 Q. Can you please describe what you observed in  
11 this photograph when you took it.

12 A. Photograph 16 is another one of the  
13 discharge points from Mr. Vos' feedlot. The pole or  
14 post that's located in the middle of the photo  
15 represents the fencing of the south boundary of the  
16 feedlot. The photo documents the beginning of  
17 channelized flow coming off of Mr. Vos' feedlot from  
18 this point. The arrows indicate the direction of  
19 flow.

20 Q. Can you please describe the slope and any  
21 other conditions you found of significance within the  
22 feedlot itself.

23 A. Well, the photo clearly shows the slope from  
24 the top of Mr. Vos' feedlot. It shows the slope that  
25 existed between the highest point of Mr. Vos' feedlot

1 and boundary of his lot, which it's extensive and  
2 which contributes to the channelized flow that's  
3 occurring right here because of that slope.

4 Q. Mr. Pollard, please turn your attention to  
5 photograph 17 of Complainant's Exhibit No. 28  
6 Pollard.

7 A. Okay.

8 Q. Please describe what you were observing in  
9 this photograph.

10 A. Photograph 17 is again just myself turning  
11 around from photograph 16 and observing the  
12 channelized flow path as it proceeded into the field  
13 south of Mr. Vos' feedlot. The yellow arrows on it,  
14 again, indicate the direction that the flow path  
15 takes as it enters the field and flows on down.

16 Q. Skipping ahead to photograph No. 20,  
17 Complainant's Exhibit No. 28 Pollard--

18 A. Okay.

19 Q. --please describe what you observed in this  
20 photograph.

21 A. Photograph 20 is channelized flow that's  
22 existing south of Lowell Vos' feedlot within the  
23 cornfield. Yellow arrows indicate the direction of  
24 that flow as it flows down towards the unnamed  
25 tributary.

1 Q. Now, how does-- Could you please explain  
2 how photograph No.-- I retract that question.

3 Please move on to photograph No. 21,  
4 Complainant's Exhibit 28 Pollard.

5 A. Okay.

6 Q. Photograph 21 of the exhibit, could you  
7 please describe what you observed there.

8 A. This is a continuation of 20. As I'm  
9 walking down the primary channelized flow path  
10 south of Mr. Vos' lot, this is a continuation of  
11 that, and again it documents the channelized flow  
12 path that existed. The yellow arrows indicate the  
13 direction that flow path was taking.

14 Q. Please turn your attention to photograph No.  
15 22.

16 A. Okay.

17 Q. Again, please describe what you saw in photo  
18 No. 22 of Complainant's Exhibit No. 28 Pollard.

19 A. Again, it's a continuation of the flow path  
20 from previous photos 21 and 20. It shows the  
21 channelized flow path. Yellow arrows indicate the  
22 direction that that channelized flow path was taking  
23 as it flowed to the unnamed tributary.

24 Q. So, Mr. Pollard, in your observations while  
25 you were on the site are you seeing a merging of

1 different flow paths at this point?

2 A. As I progressed from east to west along this  
3 channel south of the feedlot, I am seeing the  
4 channelized flow paths that I identified in--it would  
5 be photographs 16, 17, as well as photograph 18 flow  
6 down and combine with this channelized flow path as  
7 they all ultimately flow towards--in the direction of  
8 the unnamed tributary.

9 Q. Mr. Pollard, can you please describe the  
10 photographs--photograph No. 23 of Complainant's  
11 Exhibit 28 Pollard.

12 A. Photograph 23 is the beginning of a series  
13 of photos I took of manure present in the channelized  
14 flow path south of Mr. Vos' feedlot.

15 Q. Sir, could you please discuss what you found  
16 in photograph No. 24.

17 A. Photograph 24, again, is another photo of  
18 the manure that was present in the channelized flow  
19 path south of Mr. Vos' feedlot.

20 Q. How did you know it was manure, Mr. Pollard?

21 A. In all the feedlots I've been to, you know,  
22 I was able to ascertain that it was manure. There  
23 was some odor to it, high in organic matter. I've  
24 been around CAFOs long enough to know that what I'm  
25 looking at here is manure.

1 Q. Is it possible there's some other materials  
2 mixed in with it; bedding materials, other things  
3 associated with a feedlot?

4 A. It's possible. The runoff from the feedlot  
5 would contain feed, potentially bedding materials.  
6 I'm not aware of any bedding material in Mr. Vos'  
7 lot, but it could be feed, it could be hay.

8 Q. What is the probability that this material  
9 came from the cornfield?

10 A. I would say there's very, very little  
11 probability that this came from the cornfield.

12 Q. Thank you. Turn your attention now to  
13 photograph No. 26--

14 A. Okay.

15 Q. --Complainant's Exhibit 28 Pollard.

16 A. Okay.

17 Q. Please describe what you observed in this  
18 photograph when you took it.

19 A. Photograph 26 is a continuation as I have  
20 proceeded down the flow path. Again, it documents  
21 the channelized flow path that existed south of  
22 Mr. Vos' feedlot that flowed to the unnamed  
23 tributary.

24 Q. Please turn your attention to photograph No.  
25 27, Complainant's Exhibit 28 Pollard.

1 A. Okay.

2 Q. Please identify what you observed when you  
3 took this photograph.

4 A. This would be the channelized flow path  
5 continuing in an easterly--westerly direction.  
6 Arrows indicate the direction that that flow was  
7 taking. The blue arrow indicates the approximate  
8 location of the unnamed tributary in this photograph.  
9 As we are moving west, we were getting closer to that  
10 unnamed tributary, so I'm indicating that on the  
11 photo.

12 Q. And I'm calling your attention to photograph  
13 No. 28, Complainant's Exhibit 24 Pollard.

14 A. All right.

15 Q. Please identify what you observed in this  
16 photo.

17 A. Again, it's the channelized flow path as it  
18 approaches the unnamed tributary. The yellow arrows  
19 indicate the direction of flow that the channelized  
20 flow path was moving in.

21 Q. So during this trip you observed--you  
22 observed in photographs three or four channelized  
23 flow paths; is that correct?

24 A. That's correct.

25 Q. In walking these flow paths, did you observe

1 any obstructions or other impediments to surface flow  
2 from Mr. Vos' feedlot?

3 A. The only obstruction I observed was the  
4 terrace that was associated with photograph 14 and  
5 15. There were no other--I can't remember the term  
6 you used in the question, but I did not observe any  
7 other obstructions that would interfere with flow  
8 leaving Mr. Vos' feedlot.

9 Q. Thank you. Just a couple more photographs  
10 from this exhibit I would like to focus your  
11 attention on real quickly. Photograph No. 30 of  
12 Complainant's Exhibit 28 Pollard--

13 A. Yes.

14 Q. --this is--please identify what you observed  
15 in this photograph.

16 A. Photograph 30 is the unnamed tributary of  
17 Elliot Creek. This is downstream of Mr. Vos' feedlot  
18 along--I can't remember the name of the street that  
19 that was on, but it's--if you refer to the photo  
20 index of this exhibit, it's identified by--the  
21 location is identified by the No. 30 on that index.  
22 It's the unnamed tributary that flows by Mr. Vos'  
23 feedlot.

24 Q. Was water flowing at the time you were  
25 there?



1 A. Yes, it was.

2 THE ADMINISTRATIVE LAW JUDGE: Actually, you  
3 have to help me out. I don't see on the index photo 30.

4 MR. BREEDLOVE: I think there is a second  
5 page of the photo index, Your Honor.

6 THE ADMINISTRATIVE LAW JUDGE: Okay. Thank  
7 you.

8 A. This is--

9 BY MR. BREEDLOVE:

10 Q. Focus your attention on photograph 31,  
11 Complainant's Exhibit 28 Pollard.

12 A. Okay.

13 Q. Please identify what you observed in this  
14 photo.

15 A. Photograph 31 is again the unnamed tributary  
16 of Elliot Creek taken at Franklin Avenue. It's  
17 identified on the photo index by the No. 31.

18 Q. And the next photograph from this exhibit,  
19 Mr. Pollard, photograph No. 32--

20 A. Yes.

21 Q. --please identify what you observed when you  
22 took photograph No. 32, Complainant's Exhibit 28  
23 Pollard.

24 A. Photograph 32 is the unnamed tributary of  
25 Elliot Creek. Again, it's taken at the same position

1 as photos 30 and 31. However, I have now turned and  
2 I am facing west and observing the unnamed tributary  
3 from that direction.

4 Q. Water was present?

5 A. Yes, water was present.

6 Q. Was it flowing at the time you were there?

7 A. Yes, it was.

8 MR. BREEDLOVE: Your Honor, I now move for  
9 Complainant's Exhibit No. 28 Pollard to be entered  
10 into evidence.

11 MR. McAFEE: No objection.

12 THE ADMINISTRATIVE LAW JUDGE: Complainant's  
13 Exhibit 28 Pollard is admitted.

14 (Complainant's Exhibit 28 Pollard  
15 was received in evidence.)

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

17 THE ADMINISTRATIVE LAW JUDGE: Yes, go  
18 ahead.

19 BY MR. BREEDLOVE:

20 Q. Mr. Pollard, I'm going to ask you to get up  
21 to testify from these photographs.

22 A. Okay.

23 Q. Do you have something to write with?

24 A. I have two pens here, yes.

25 Q. Okay. Thank you. This is Complainant's

1 Exhibit 42 Pollard.

2 MR. BREEDLOVE: Your Honor, unfortunately we  
3 don't have an index for this one. But hopefully we  
4 can move through them rather quickly.

5 THE ADMINISTRATIVE LAW JUDGE: He's going to  
6 be marking on this exhibit, these photos?

7 MR. BREEDLOVE: Exactly, Your Honor.

8 THE ADMINISTRATIVE LAW JUDGE: But the  
9 photo--that aerial photo is what exhibit number?

10 MR. BREEDLOVE: That is Complainant's  
11 Exhibit No. 6.

12 THE ADMINISTRATIVE LAW JUDGE: Okay.

13 MR. BREEDLOVE: We'll enter it as a new  
14 exhibit, Your Honor.

15 THE ADMINISTRATIVE LAW JUDGE: Sure. Okay.

16 BY MR. BREEDLOVE:

17 Q. Mr. Pollard, when I ask you about a  
18 photograph, similar to what you've done on previous  
19 indexes, if you would just write a number in a circle  
20 and a line indicating direction that you took the  
21 photograph.

22 A. Okay.

23 THE ADMINISTRATIVE LAW JUDGE: By the way,  
24 when you say Complainant's Exhibit 6, you're having  
25 me look at Complainant's Exhibit 6, not Complainant's

1 Exhibit 6 Pollard?

2 MR. BREEDLOVE: Correct. It's the unmarked  
3 version of that, Your Honor.

4 THE ADMINISTRATIVE LAW JUDGE: All right.

5 BY MR. BREEDLOVE:

6 Q. Mr. Pollard, when was the next time you went  
7 to Mr. Vos' feedlot?

8 A. The next visit was on July 1st, 2008..

9 Q. And what was the purpose of that visit?

10 A. That was to ground truth again the use of  
11 our model, and we wanted to again gather additional  
12 documentation of the channelized flow paths from  
13 Mr. Vos' feedlot.

14 Q. So were you looking to verify some of the  
15 conclusions made by the model?

16 A. Yeah. Yes.

17 Q. Were you able to walk the flow path from  
18 Mr. Vos' feedlot to the unnamed tributary?

19 A. I did, yes.

20 Q. Did you observe any obstructions?

21 A. Not from the areas I walked, no.

22 Q. Okay. Mr. Pollard, focus your attention on  
23 photo 1 of Complainant's Exhibit 42 Pollard.

24 A. Okay.

25 Q. Complainant's Exhibit 42 Pollard, did you

1 take these photographs?

2 A. Yes, I did.

3 Q. Did you place the marks on the photographs?

4 A. Yes, I did.

5 Q. What was the purpose of placing these marks?

6 A. The marks on these photographs indicate  
7 direction of flow for that channelized flow  
8 paths--I'm sorry--for the channelized flow paths.

9 Q. Mr. Pollard, looking at photograph No. 1 of  
10 Complainant's Exhibit 42 Pollard, can you please  
11 identify what you observed in this photograph when  
12 you took it.

13 A. Photograph No. 1 is a photo of channelized  
14 flow paths coming from Mr. Vos' feedlot along his  
15 southern boundary.

16 Q. Were there any characteristics or anything  
17 notable that you noticed during this observation when  
18 you took the photograph?

19 A. There's definitely channelized flow path  
20 that exists. There was no corn present in the area  
21 of the channelized flow path indicating that it had  
22 been washed away, and there was very little loose  
23 sediment or soil present in the flow path itself.

24 Q. Okay. Mr. Pollard, on what's Complainant's  
25 Exhibit No. 6, could you please mark the location and

1 number of this photograph and direction you took it.

2 A. Yes. (Witness marks on exhibit.) I'll mark  
3 it with a No. 1.

4 Q. With the circle and arrow and direction you  
5 took the photograph.

6 A. Okay. (Witness marks on exhibit.) Will  
7 that work?

8 Q. Thank you. Photograph No. 2, would you  
9 please identify the location on the index where you  
10 took photograph No. 2 as part of Complainant's  
11 Exhibit 42 Pollard.

12 A. Photograph No. 2, given the size of the  
13 photo--these are approximate--but it was in this area  
14 and it's looking that way. (Witness marks on exhibit.)

15 Q. Mr. Pollard, what did you observe in this  
16 photograph?

17 A. Again, this is the continuation of  
18 channelized flow paths as they were leaving Mr. Vos'  
19 feedlot. This is the continuation of the channelized  
20 flow path in photograph No. 1. And the yellow arrows  
21 indicate the direction of the flow and the direction  
22 that the channelized flow paths were taking.

23 Q. Any other observations that are notable in  
24 this photograph?

25 A. Again, clear scouring, evidence of scouring,

1 no loose sediment or very little loose sediment  
2 present, which is indicative of flow or rapid flow,  
3 no vegetation in the channelized flow paths.

4 Q. Turn to photograph No. 3, Complainant's  
5 Exhibit 42 Pollard.

6 A. Okay.

7 Q. Please describe what you observed when you  
8 took photograph No. 3.

9 A. Photograph 3 is again a continuation of the  
10 channelized flow as it was leaving Mr. Vos' feedlot  
11 and going into the unnamed tributary. Again, this is  
12 the channelized flow path that is south of Mr. Vos'  
13 feedlot.

14 Q. Could you please place--identify it on the  
15 photo index.

16 A. Similar to how I marked my other exhibits,  
17 the numbers are going to have to be approximate  
18 locations as the photo is so small I can't get  
19 exactly where I need to be.

20 Q. Mr. Pollard, in this photograph it looks as  
21 though there is a notebook. Can you explain why that  
22 might be in this photo.

23 A. That was put in there for scale. When  
24 you're in the field with the corn it just--you put  
25 something in there for scale to get an idea of the

1 size. That book is approximately 10 inches wide.

2 Q. Okay. Mr. Pollard, looking at photograph  
3 No. 4--

4 A. Okay.

5 Q. --would you please identify on the index map  
6 the location of photograph No. 4.

7 A. It's right here. (Witness marks on  
8 exhibit.)

9 Q. Mr. Pollard, please describe what you  
10 observed when you took this photograph No. 4.

11 A. No. 4 is again the channelized flow, the  
12 primary channel that flowed--that was flowing south  
13 of Mr. Vos' feedlot. Again, this is just a  
14 photograph of that channel. The arrows indicate the  
15 direction of flow.

16 Q. In this photo it's a little different than  
17 some of the others. In photograph No. 4 there is a  
18 low spot or wet spot. Can you please describe what  
19 you observed there.

20 A. That's-- There are some areas that have  
21 been scoured out that are low and that are holding  
22 liquids. I observed those, and they appeared to be a  
23 mixture of manure and water sediment.

24 Q. Now, looking at photograph No. 5 in  
25 Complainant's Exhibit No. 42 Pollard--



1 A. Yes.

2 Q. --is this the same dark spot that we see in  
3 photograph No. 4?

4 A. No. This-- The wet area identified in  
5 photograph No. 5 is not the same as the wet area in  
6 photograph No. 4.

7 Q. Did the subject of photograph No. 5, did it  
8 have any characteristics that are notable?

9 A. It smelled of manure, presence of flies,  
10 stagnant.

11 Q. Could you otherwise describe what's depicted  
12 in this photograph No. 5.

13 A. Photograph No. 5 is again the channelized  
14 flow through the cornfield south of the feedlot. The  
15 yellow arrow indicates the direction that flow was  
16 taking.

17 Q. Could you identify that on the photo index,  
18 please.

19 A. Yes. (Witness marks on exhibit.)

20 Q. Focus your attention on photo No. 6 in  
21 Complainant's Exhibit 42 Pollard. Please describe  
22 what you observed in this photo.

23 A. Continued channelized flow path south of  
24 Mr. Vos' feedlot. The yellow arrow again indicates  
25 the direction that flow was occurring.

1 Q. Now, is this the--the dark area at the  
2 bottom of photograph No. 6, is that a different area  
3 than that identified in photograph No. 5?

4 A. Yes.

5 Q. Describe any significant characteristics of  
6 that.

7 A. Similar characteristics, strong smell of  
8 manure, flies present, liquids present, stagnant.

9 Q. Please identify on the index map photo No.  
10 6.

11 A. (Witness marks on exhibit.)

12 Q. I'll focus your attention to photograph No.  
13 7 in Complainant's Exhibit 42 Pollard. Please describe  
14 what you observed when you took this photograph.

15 A. Again, photograph No. 7 is the channelized  
16 flow path as it's flowing south of Mr. Vos' feedlot  
17 to the unnamed tributary. The yellow arrow indicates  
18 the direction that flow was taking. Again, we have  
19 liquids present, the same characteristics as what I'd  
20 seen previously.

21 Q. Anything else noteworthy in this photo?

22 A. Again, I placed the book and pen in the  
23 picture for scale to judge the overall width or help  
24 assess the overall characteristics of that channel.

25 Q. Could you please identify photo No. 7 on the

1 index map--

2 A. Yes.

3 Q. --to Complainant's Exhibit 42 Pollard.

4 A. All these 5, 6 and 7 are all in the same  
5 area right around in here. (Witness marks on  
6 exhibit.) This one is actually back a little bit.  
7 That's actually like this. This is going to get  
8 cluttered.

9 Q. Okay. Turn your attention to photo No. 8 to  
10 Complainant's Exhibit 42 Pollard.

11 A. Okay.

12 Q. Once again, please identify the--what you  
13 observed when you took this photo.

14 A. This is the channelized flow path that we've  
15 been documenting in the other photos. We are now  
16 getting down closer to the unnamed tributary, and the  
17 yellow arrows indicate the direction of flow that the  
18 flow path was taking. Again, I placed our book in  
19 the picture for scale. You can see that the  
20 channelized flow path is getting wider as we proceed  
21 down this flow path.

22 Q. Thank you. Photograph No. 10, Complainant's  
23 Exhibit 42 Pollard.

24 A. Photograph No. 10?

25 THE ADMINISTRATIVE LAW JUDGE: You were on

1 8, weren't you?

2 MR. BREEDLOVE: I'm sorry. My apologies to  
3 everybody.

4 BY MR. BREEDLOVE:

5 Q. Photograph No. 9 of Complainant's Exhibit 42.  
6 Prior to doing that, could you please place the--  
7 identify the location of photograph 8 on the index  
8 map.

9 THE ADMINISTRATIVE LAW JUDGE: If you're  
10 getting too cluttered, you can just put the circle up  
11 above and have the line be longer. You don't have to  
12 crunch them altogether, as long as the arrow  
13 indicates the area that you're depicting on the map  
14 of the photo.

15 THE WITNESS: Okay.

16 A. This one I think we can do. (Witness marks  
17 on exhibit.)

18 Q. Now, focusing your attention on  
19 Complainant's Exhibit 42 Pollard, No. 9--

20 A. Yes.

21 Q. --please describe what you identified when  
22 you took this photograph.

23 A. Again, it's channelized flow path as we are  
24 getting closer to the unnamed tributary. The yellow  
25 arrows indicate the direction that the flow path was

1 taking as it approached that unnamed tributary.

2 Q. Photograph No. 10, Complainant's Exhibit 42  
3 Pollard.

4 A. Okay.

5 Q. Please identify what you observed in that  
6 photo.

7 A. Photograph No. 10 is a close-up photo of the  
8 liquids in photograph No. 9. It appeared as though  
9 there was a groundwater--there was some groundwater  
10 infiltration occurring at this point in mixing--or  
11 flowing, I should say, into the channelized flow path  
12 that I had been walking down.

13 Q. Mr. Pollard, was it basically a seep? Was  
14 it groundwater coming out of the ground there?

15 A. Yes, there was a point at which it appeared  
16 as though groundwater was coming to the surface.

17 Q. Did this appear to have any relationship  
18 with the feedlot?

19 A. I'm sorry?

20 Q. Did this appear to have any relationship  
21 with the feedlot?

22 A. I didn't hear you.

23 Q. Did this groundwater appear to have any  
24 relationship with the feedlot?

25 A. No, it did not.

1 Q. Backtrack for one second. Can you identify  
2 photo No. 9 on the photo index for Complainant's  
3 Exhibit 42.

4 A. Photo No. 9?

5 Q. Correct.

6 A. (Witness marks on exhibit.)

7 Q. Now turn your attention to photograph No.  
8 11, Complainant's Exhibit 42 Pollard.

9 A. Okay.

10 Q. Please describe what you observed when you  
11 took this photograph.

12 A. Photograph No. 11 is the point at which the  
13 channelized flow path flows into the unnamed  
14 tributary to Elliot Creek, and this is a photo of  
15 that convergence.

16 Q. Does the yellow arrow indicate the flow?

17 A. Yes, the yellow arrow indicates the  
18 direction of flow.

19 Q. And what does the blue arrow indicate?

20 A. The blue arrow indicates the direction of  
21 flow of the unnamed tributary, as well as the general  
22 orientation of the unnamed tributary in this  
23 photograph.

24 Q. Did you place the blue line on this photo?

25 A. Yes, I did.

1 Q. Turning to the last photo, photograph No. 12,  
2 Complainant's Exhibit 42 Pollard--

3 A. Okay.

4 Q. --please describe what you observed in this  
5 photo.

6 A. Photograph No. 12 is the unnamed tributary  
7 of Elliot Creek. It's at the point at which the  
8 channelized flow path enters there. I've turned and  
9 I am now facing south in the photograph, and it's  
10 documenting that unnamed tributary south of the  
11 channelized flow.

12 Q. Could you go ahead and please place on the  
13 photo index the locations that you took photographs  
14 11 and 12.

15 A. Yes. (Witness marks on exhibit.)

16 Q. Now, just for consistency, Mr. Pollard, on  
17 photograph No. 11, the unnamed tributary, the line  
18 demarking the unnamed tributary is blue?

19 A. That's correct.

20 Q. Photograph No. 12, we are looking at the  
21 unnamed tributary; is that correct?

22 A. Yes; that is correct.

23 Q. So in this instance if you're being  
24 consistent with photograph No. 11, that line would be  
25 blue?

1 THE ADMINISTRATIVE LAW JUDGE: What was the  
2 last thing you said? Your voice trailed off.

3 MR. BREEDLOVE: I'm sorry. We just did  
4 photograph 11. Mr. Pollard testified the unnamed  
5 tributary was blue. I just wanted to make certain  
6 that-- In photograph 12 the yellow line had been  
7 used, and I was making sure we were being consistent  
8 in identifying this as the unnamed tributary.

9 THE ADMINISTRATIVE LAW JUDGE: Do you agree  
10 with that?

11 THE WITNESS: Yes, that is the unnamed  
12 tributary.

13 MR. BREEDLOVE: Thank you.

14 THE ADMINISTRATIVE LAW JUDGE: Yes, let's go  
15 off the record for a minute.

16 (Off-the-record discussion.)

17 THE ADMINISTRATIVE LAW JUDGE: We had an  
18 off-the-record discussion about a particular photo.  
19 Go ahead, Mr. Breedlove.

20 MR. BREEDLOVE: Your Honor, at this time I  
21 would move for Complainant's Exhibit 42 Pollard to be  
22 moved into the record.

23 MR. McAFEE: Again, no objection subject  
24 to-- Well, I guess I do have a question and I guess  
25 an objection to photo No. 10. Its location has not



1 been marked on the overhead there. And I question  
2 the--again, without that location I don't know.  
3 exactly what--where it is and how close it is and its  
4 relation to the channelized flow path which has been  
5 the course of this discussion.

6 Other than that, no objection.

7 THE ADMINISTRATIVE LAW JUDGE: Do you have a  
8 response to that?

9 MR. BREEDLOVE: Mr. Pollard, let's go ahead  
10 and identify where photograph No. 10 is. I have no  
11 problem with that. I have no problems with putting  
12 it in there.

13 THE ADMINISTRATIVE LAW JUDGE: So this  
14 witness is now going to mark on this exhibit  
15 photograph No. 10?

16 MR. BREEDLOVE: Yes, Your Honor.

17 (Witness marks on exhibit.)

18 THE ADMINISTRATIVE LAW JUDGE: While he's  
19 doing that, I take it, Mr. Breedlove, you are going  
20 to give a new name for this Complainant's Exhibit 6  
21 because we have a Complainant's Exhibit 6, we have a  
22 Complainant's Exhibit 6 Pollard. This would be  
23 another Complainant's Exhibit 6 with the addition, so  
24 it will be whatever you want to call it.

25 MR. BREEDLOVE: I was hoping to call it

1 photo index Complainant's Exhibit 42 Pollard and  
2 attach it to that exhibit.

3 THE ADMINISTRATIVE LAW JUDGE: That's fine.  
4 Are you going to move for the admission of that?

5 MR. BREEDLOVE: Yes, Your Honor, I move for  
6 the admission.

7 THE ADMINISTRATIVE LAW JUDGE: So  
8 Complainant's Exhibit--what is the number?

9 MR. BREEDLOVE: 42 Pollard.

10 THE ADMINISTRATIVE LAW JUDGE: Described as  
11 the index to--

12 MR. BREEDLOVE: Complainant's Exhibit 42  
13 Pollard photo index.

14 THE ADMINISTRATIVE LAW JUDGE: Okay. Great.

15 MR. BREEDLOVE: Of course, Your Honor, we'll  
16 make copies of that.

17 THE ADMINISTRATIVE LAW JUDGE: Any objection  
18 to that?

19 MR. McAFEE: No objection to that.

20 THE ADMINISTRATIVE LAW JUDGE: 42 Pollard is  
21 admitted.

22 (Complainant's Exhibit 42 Pollard  
23 was received in evidence.)

24 MR. BREEDLOVE: I guess I would just ask,  
25 Your Honor, and, Mr. McAfee, if it turns out that

1 that photo doesn't photocopy or copy very well,  
2 perhaps we can make a cleaner copy and you can look  
3 at it and approve it.

4 MR. McAFEE: What photo is that?

5 THE ADMINISTRATIVE LAW JUDGE: Let's go off  
6 the record.

7 (Off-the-record discussion.)

8 THE ADMINISTRATIVE LAW JUDGE: Back on the  
9 record.

10 BY MR. BREEDLOVE:

11 Q. Mr. Pollard, in your visits-- You can have  
12 a seat. We're done testifying about that.

13 Mr. Pollard, during your visits to Mr. Vos'  
14 facility, have you ever had--let me rephrase that.  
15 During any of your conversations with Mr. Vos has he  
16 ever indicated how often he scrapes his feedlots?

17 A. He's indicated to me that he scrapes it  
18 every two weeks.

19 Q. Mr. Pollard, while you were--in your role as  
20 compliance officer, did you have an opportunity to  
21 review rain records associated with the area around  
22 Mr. Vos' feedlot?

23 A. Yes, I reviewed rainfall data from numerous  
24 stations surrounding Mr. Vos' feedlot.

25 Q. Have you provided those rainfall records for

1 the Court?

2 A. They are included here, yes.

3 Q. Where did you get these rainfall records?

4 A. These rainfall records were provided by the  
5 National Weather Service.

6 Q. Have they certified to their accuracy?

7 A. Yes, they have.

8 Q. Thank you. Let's focus our attention on  
9 some of the controls that Mr. Vos needed for his  
10 feedlot. What is the typical industry standard for  
11 containing runoff from an open feedlot?

12 A. One of the most common methods is  
13 installation of sedimentation basins which then flow  
14 into some type of effluent basin. And effluent is  
15 then disposed of in accordance.

16 Q. How is it typically disposed of?

17 A. Through land application.

18 Q. Has Mr. Vos ever indicated what his intent  
19 was for construction at his facility?

20 A. He has given an indication that he plans on  
21 building controls or planned on building controls.

22 Q. Okay. Have you done any investigations as  
23 to what the cost of those controls might be?

24 A. Yes, I have.

25 Q. And what resources have you used for your

1 investigation?

2 A. In assessing the cost of controls, I often  
3 refer to the Iowa Beef Feedlot Systems Manual.

4 Q. And who is that-- Who generated the Beef  
5 Feedlot Systems Manual?

6 A. That's produced by the Iowa State  
7 University.

8 Q. And in what way did you use the Beef Feedlot  
9 Systems Manual?

10 A. I was trying to come up with costs that  
11 Mr. Vos would have incurred if he would have  
12 installed a traditional system in an open feedlot.

13 Q. And what sort of information does the Beef  
14 Feedlot Systems Manual provide you?

15 A. It provides various different types of  
16 systems. It estimates a cost associated with  
17 construction of those systems, operation of those  
18 systems.

19 Q. From the Beef Feedlot Systems Manual, were  
20 you able to estimate the cost of those controls at  
21 Mr. Vos' feedlot?

22 A. Yes.

23 Q. What were those estimations?

24 A. I would have to look in the exhibit.

25 Q. Please do. I'm sorry, Mr. Pollard. Please

1 turn to Complainant's Exhibit No. 32.

2 A. Okay.

3 Q. Please describe the runoff control options  
4 that are discussed in Complainant's Exhibit No. 32.

5 A. Yes. They looked at earthen lot with  
6 windbreak. They looked at earthen lot with shed,  
7 concrete lot with shed, complete confinement with  
8 solid floor and complete confinement with slatted  
9 floor.

10 Q. What is the least expensive option proposed  
11 by the Beef Feedlot Systems Manual?

12 A. The least expensive appears to be the  
13 earthen lot with windbreak.

14 Q. Is this the one you used for approximating  
15 the cost to build controls?

16 A. Yes.

17 Q. Are there any other assumptions you made in  
18 determining which was the most applicable type of  
19 containment system?

20 A. Yeah. The estimates are by type, as well as  
21 by size. So they estimated the cost of building--let  
22 me look at the table to be sure I'm getting it right.

23 THE ADMINISTRATIVE LAW JUDGE: What word did  
24 you just use? They estimated the cost of--

25 (Record read by the reporter.)

1 THE ADMINISTRATIVE LAW JUDGE: That's fine.

2 A. --controls.

3 Q. Mr. Pollard, looking at the appendix, Table  
4 10 on Page 19--

5 A. Yes, I found it.

6 Q. Okay.

7 A. This is the price breakdowns they provide  
8 for the scenario I used, which was earthen lot with  
9 windbreak. They also had broken that down into three  
10 size categories; 750 head, 1,500 head and 5,000 head.

11 Q. And what is-- What did you estimate as the  
12 size of--the number of cattle confined at Mr. Vos'  
13 feedlot over the five-year period you were looking  
14 at?

15 A. Evidence that we have, documentation we got  
16 in our inspection report indicated he had  
17 approximately 2,200, 2,100 head, capacity of 3,000.  
18 The one I felt most closely represented that was  
19 1,500 head a lot.

20 Q. Would you say that was a conservative  
21 estimate then?

22 A. Yes.

23 Q. And what costs are being considered here in  
24 Table 10?

25 A. I looked at the cost of environmental

1 structures, which would include engineering costs for  
2 those environmental structures, the construction  
3 costs of those structures, as well as irrigation  
4 systems that would be required.

5 Q. And irrigation systems would serve what  
6 purpose?

7 A. To dispose of or land-apply liquids that  
8 would have been captured in the basins.

9 Q. Did you consider any other options discussed  
10 in the systems manual?

11 A. No, I did not.

12 Q. Why not?

13 A. I felt this most closely represented what  
14 was going on at Mr. Vos' feedlot, plus it was the  
15 lowest estimate. So I felt that it was a  
16 conservative estimate of overall costs.

17 Q. Now, some of the assumptions made in this  
18 systems manual, what sort of rainfall were they  
19 looking to control in their assumptions?

20 A. They based the designs on the requirement of  
21 being able to hold up to a 25-year, 24-hour storm  
22 event.

23 Q. And do you know the design storm event they  
24 used for their assumptions in this?

25 A. I believe it was 5.2 inches.



1 Q. And how does that compare with the 25-year  
2 storm event for Mr. Vos' area?

3 A. It is the-- It is very close, if not the  
4 same.

5 Q. So you believe this is a reasonable  
6 estimation--a reasonable way to estimate the costs  
7 for building controls?

8 A. Yes.

9 Q. Okay. Mr. Pollard, I would like to change  
10 speed just a little bit and focus on some of the  
11 risks imposed by feedlot runoff.

12 THE ADMINISTRATIVE LAW JUDGE: Before he  
13 does that, I want to make sure I appreciate that.

14 So, Mr. Pollard, looking at this Table 10,  
15 that's the investment that you were just referring  
16 to; right?

17 THE WITNESS: Yes. The initial investment,  
18 yes.

19 THE ADMINISTRATIVE LAW JUDGE: So for a  
20 facility of the size of the Respondent's, the initial  
21 investment would be better than half a million  
22 dollars and then an annual cost of about 61,000 to  
23 maintain it; is that right? 547,000--

24 THE WITNESS: That's the total they  
25 provided.

1           THE ADMINISTRATIVE LAW JUDGE: That's what  
2 it would cost to install this least expensive  
3 operation, a little more than half a million;  
4 correct?

5           THE WITNESS: According to this, yes.

6           THE ADMINISTRATIVE LAW JUDGE: And then they  
7 give the breakdown as to how that--if you had 1,500  
8 head, that would add to the cost of your cattle of  
9 \$365 per head of cattle; is that right.

10          THE WITNESS: That's how I'm reading this,  
11 yes.

12          THE ADMINISTRATIVE LAW JUDGE: Go ahead,  
13 Mr. Breedlove.

14 BY MR. BREEDLOVE:

15          Q. Mr. Pollard, for the purpose of  
16 environmental controls, were we looking at \$547,000?

17          A. No, we were not.

18          Q. What did you focus your cost estimates on?

19          A. The cost estimates I looked at were only  
20 related to environmental structures.

21          Q. So were those-- Did you look at the  
22 structures that were necessary to come into  
23 compliance with the Clean Water Act, those alone?

24          A. Yes.

25          Q. Mr. Pollard, I would like to turn to some of

1 the characteristics of feedlot runoff.

2 A. Okay.

3 Q. Specifically, I would like to turn your  
4 attention to Complainant's Exhibits 33 and 34.

5 A. Okay.

6 Q. What are some of the threats to the-- What  
7 are some of the threats posed to human health and the  
8 environment by feedlot runoff?

9 A. Primarily of concern as it relates to water  
10 are nutrients and pathogens.

11 Q. Now, pathogens provide a threat to human  
12 health; is that correct?

13 A. Yes.

14 Q. Have these been investigated by EPA?

15 A. Yes, they have extensively.

16 Q. Has EPA documented their investigations on  
17 these pathogens and other pollutants?

18 A. Yes, they have.

19 Q. Where have they documented those?

20 A. The two studies that we have are two of many  
21 that they've looked at.

22 Q. Now, referring you to Complainant's Exhibit  
23 No. 33, Risk Management Evaluation for Concentrated  
24 Animal Feeding Operations--

25 A. Okay.

1 Q. --are you familiar with this document?

2 A. Yes, I am.

3 Q. Have you used this document in your work?

4 A. Yes, I have.

5 Q. Have you relied on it for your conclusions  
6 regarding threats to human health and the  
7 environment?

8 A. Yes, I have.

9 Q. Complainant's Exhibit No. 34--

10 A. Okay.

11 Q. --please identify that.

12 A. Complainant's Exhibit 34 is entitled  
13 Environmental Impacts of Animal Feeding Operations.

14 Q. Who produced this document?

15 A. This was produced by the United States  
16 Environmental Protection Agency.

17 Q. Have you relied on this document?

18 A. Yes, I have.

19 MR. BREEDLOVE: Your Honor, could I have a  
20 minute or two?

21 THE ADMINISTRATIVE LAW JUDGE: How much time  
22 do you need?

23 MR. BREEDLOVE: Just a minute or two to talk  
24 to counsel.

25 THE ADMINISTRATIVE LAW JUDGE: We're off the

1 record for a moment.

2 (Off-the-record discussion.)

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

5 BY MR. BREEDLOVE:

6 Q. Just a couple more questions, and we'll wrap  
7 this up. In regard to the rain records we discussed  
8 earlier, Mr. Pollard, you had said that you collected  
9 rain records for--from the National Weather Service  
10 and provided them today. I think we failed to--  
11 Were those in Complainant's Exhibit No. 25? Could  
12 you look at that. Excuse me, 24, Complainant's  
13 Exhibit 24.

14 MR. BREEDLOVE: My apologies, Your Honor.  
15 I'm out of order here. Complainant's Exhibit No. 46,  
16 Your Honor.

17 A. Yes. Those are included in Complainant's  
18 Exhibit 46, and they appear to be marked by the  
19 individual stations.

20 BY MR. BREEDLOVE:

21 Q. Okay. These are the rainfall records you  
22 obtained from the National Weather Service?

23 A. Yes, they are.

24 Q. They're identified as Complainant's Exhibit  
25 No. 46?

1 A. That's correct.

2 Q. Okay. Thank you, Mr. Pollard. Just a  
3 couple more questions.

4 Back to some of the characteristics of  
5 runoff from feedlots, can you describe some of the  
6 impacts caused by the nutrients found in feedlot  
7 runoff.

8 A. Could you repeat the question, please.

9 Q. Please describe some of the impacts on water  
10 quality caused by feedlot runoff.

11 A. Some of the pollutants associated with CAFOs  
12 are nutrient pollutants, nitrogen, the nitrogen in  
13 its various forms, such as ammonia are very toxic to  
14 aquatic life. They can also be toxic to humans,  
15 especially young children and babies.

16 Sediment or other solids that are associated  
17 with feedlot CAFO runoff can be detrimental to  
18 aquatic life or overall water quality. Phosphorous  
19 can lead to overnutrification of water, which creates  
20 water quality concerns.

21 The health impacts for pathogens can affect  
22 human health directly in the form of illness caused  
23 by e coli, crypto sporidium, or other viruses,  
24 bacteria.

25 Q. Some of those pathogens and other

1 contaminants are described in depth in Complainant's  
2 Exhibits 33 and 34?

3 A. Yes.

4 MR. BREEDLOVE: No further questions, Your  
5 Honor.

6 THE ADMINISTRATIVE LAW JUDGE: Okay. We're  
7 going to take a 10-minute break here, no more than 10  
8 minutes.

9 Before we do that, though, I just want to  
10 make sure I have it clear. I'm asking Mr. Pollard  
11 this question.

12 When we talk about the 25-year, 24-hour  
13 rainfall amount, is it fair to characterize  
14 that--please tell me if I've got it wrong--but that  
15 is the most amount of rain that one would expect  
16 based on a 25-year history to occur in the period of  
17 24 hours. In this instance it's based on Exhibit  
18 No. 23, it's listed as 5.2 inches. If you look back  
19 over a 25-year period, that would be the maximum  
20 amount of rain that one would expect during that  
21 24-hour period?

22 THE WITNESS: As I understand it, that's  
23 correct.

24 THE ADMINISTRATIVE LAW JUDGE: You're not  
25 quite sure either?

1 THE WITNESS: It's the probability that--  
2 If I get this correct, it's the amount of rain that  
3 would occur--the 24-hour storm that will occur in a  
4 25-year period in the largest--

5 THE ADMINISTRATIVE LAW JUDGE: I assume  
6 that's based on looking back on records?

7 THE WITNESS: Yes.

8 THE ADMINISTRATIVE LAW JUDGE: They figure  
9 out this is the most we've had that we've recorded  
10 over a 25-year window. We never saw more than 5.2,  
11 so that's the mark?

12 THE WITNESS: I can't say for sure that that  
13 is the methodology used to determine that 25-year,  
14 24-hour storm.

15 THE ADMINISTRATIVE LAW JUDGE: Okay. Thank  
16 you. Let's take that 10-minute break. It's 20 of 4,  
17 so 10 of 4 we'll pick it up again. And we'll stop  
18 promptly at a couple minutes before 5.

19 (Short recess.)

20 THE ADMINISTRATIVE LAW JUDGE: Back on the  
21 record. Start with your cross-examination,  
22 Mr. McAfee.

23 MR. McAFEE: Yes, sir.  
24  
25



## CROSS-EXAMINATION

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BY MR. McAFEE:

Q. Mr. Pollard, I will--may I call you Steve?

A. Yes.

Q. Okay. We have a lot to go through here, and I thought it might shorten it up using one word, going with Steve. So if that's okay, that's how I will address you.

As you're well aware, I represent Mr. Vos, and you testified you've been to his feedlot several times and have met with him several times.

I guess I'll maybe start, one of the comments you testified to I think towards the end of your testimony on direct was that Lowell had told you he cleaned out a--I want to make sure I accurately reflect the record--that Lowell had during your visits with him said that--he had said he cleans--scrapes the feedlots about once every two weeks; is that correct?

A. Yes.

Q. That's correct as to your testimony?

A. I said every two weeks.

Q. And when were those visits? Do you recall when that was that you visited with Lowell that he told you that?

1           A.     My recollection is that it occurred during  
2 the discussions we had here in Des Moines.

3           Q.     Okay. I can't myself testify as to what the  
4 record will be, but I think there may be different  
5 testimony than that from Mr. Vos as to his frequency  
6 of scraping, and I was just curious. Since this is  
7 my only chance to ask you questions, I wanted to make  
8 sure of the basis for that. But we'll deal with that  
9 through additional testimony.

10           I guess we'll just start with your first  
11 visit to the feedlot, and you testified to that  
12 today. Would you tell me when that was again.  
13 You've had three visits; is that correct?

14           A.     That's correct.

15           Q.     And when was the first one again?

16           A.     The first visit was in December of 2006.

17           Q.     And you didn't actually-- I think you  
18 testified you did not actually go to the feedlot  
19 itself, you were in the area; is that correct?

20           A.     That's right. I drove by the facility and  
21 was in the area.

22           Q.     Did you talk to Mr. Vos then?

23           A.     No, I did not.

24           Q.     Okay. And I think you testified the purpose  
25 for that visit was to take some photos primarily of

1 the unnamed tributary and of Elliot Creek; is that  
2 correct?

3 A. The purpose was to gather information on the  
4 unnamed tributary and Elliot Creek.

5 Q. And you really didn't make any observations  
6 or photos regarding alleged feedlot runoff on that  
7 visit?

8 A. No, I did not.

9 Q. Did you observe the feedlot at all?

10 A. I saw it from the road, yes.

11 Q. Do you have any testimony as to--again, I  
12 just want make sure I'm clear--do you have any  
13 testimony as to any alleged runoff from the feedlot  
14 on that day?

15 A. I have no testimony.

16 Q. Okay.

17 THE ADMINISTRATIVE LAW JUDGE: Which again  
18 was the first visit, which was 12-06. Is that what  
19 you're talking about?

20 MR. McAFEE: Yes, those are the questions I  
21 was asking about.

22 THE WITNESS: Yes.

23 BY MR. McAFEE:

24 Q. Now let's move forward to the next visit,  
25 and when was that?

1 A. That would have been in March 2008.

2 Q. Okay. And I think we'll just maybe jump  
3 right into that. First of all, you don't have a  
4 report or anything based on that visit?

5 A. I did not generate a report, no.

6 Q. Is that standard to not generate a report  
7 for a visit like that?

8 A. I would say yeah, yes.

9 Q. Okay. Who was with you on that date?

10 A. Don Hamera, D-O-N H-A-M-E-R-A.

11 Q. Anyone else?

12 A. Not that I recall, no.

13 Q. And were you-- Did you visit any other  
14 feedlots while you were here that day? By "here," I  
15 mean in Iowa.

16 A. Yes, I did.

17 Q. And I don't need to know--I was just trying  
18 to determine whether the visit was specifically to go  
19 to the Lowell Vos feedlot or if you had other reasons  
20 to be here.

21 A. We were assessing another site, as well.

22 Q. Okay. Did you notify Mr. Vos prior--was he  
23 aware you were coming?

24 A. I believe the notification--there was a  
25 notification made. I did not directly contact him,

1 as I recall.

2 Q. Did you talk to him that day?

3 A. I spoke with him that day, yes.

4 Q. And what was the discussion regarding?

5 A. As I recall, the discussion primarily was  
6 associated with why I was there.

7 Q. And did Lowell cooperate with your visit?

8 A. Yes, he did.

9 Q. Do you recall on the day you were there, did  
10 you determine how many cattle were at his feedlot at  
11 that time?

12 A. I observed-- While I was there I observed,  
13 as I was looking at the site, the number of cattle.  
14 I did not make an official determination as to the  
15 number.

16 Q. Do you remember what that observation was?

17 A. Yes.

18 Q. What was that?

19 A. It was low.

20 THE ADMINISTRATIVE LAW JUDGE: It was what?

21 THE WITNESS: Low.

22 BY MR. McAFEE:

23 Q. And, Steve, you've been present during  
24 testimony this morning in this proceeding where I may  
25 have stated it--I don't know that it's been testified

1 to in the record yet--but that Lowell Vos reduced his  
2 feedlot capacity to less than a thousand head as of  
3 February of 2007.

4           So you were there on March 11 of 2008, and  
5 you've indicated that your understanding was the  
6 number of cattle were low. Do you believe it was  
7 below a thousand head?

8           A.     Yes.

9           Q.     So at that time of your visit, Lowell's  
10 feedlot would not have been considered a CAFO; is  
11 that correct?

12          A.     I don't know the answer to that.

13          Q.     Don't you make determinations as to when a  
14 feedlot is a CAFO, or not?

15          A.     Yes.

16          Q.     And based on the information you have and  
17 you had at that time, did you believe his feedlot was  
18 a CAFO?

19          A.     Well, the definition of CAFO is complicated.

20          Q.     Okay. Do you believe it was a large CAFO?

21          A.     At the time, no.

22          Q.     Okay. And by "a large CAFO," the thousand  
23 head benchmark. At that time you did not believe  
24 that he was over a thousand head?

25          A.     Correct.

1 Q. Okay. So the purpose of your visit  
2 was--would not have been compliance related as of the  
3 date you were there; is that correct?

4 A. In the broader sense I was--I was at his  
5 site to assess compliance.

6 Q. Okay. Was he in compliance with the  
7 applicable regulations on the day you were there?

8 A. He appeared to be below a thousand head.

9 Q. Okay. And I'll repeat my question. Was he  
10 in-- Based on the information you have, was he in  
11 compliance with the CAFO regulations on the day you  
12 were there?

13 A. He appeared to be.

14 THE ADMINISTRATIVE LAW JUDGE: Let's just  
15 make the record clear. This was March 2008. That's  
16 the day that you're talking about--

17 MR. McAFEE: Yes, Your Honor.

18 THE ADMINISTRATIVE LAW JUDGE: --that month,  
19 that year. When you say "at that time," I want to  
20 make it clear on the record, that's what your answers  
21 related to, right, March 2008?

22 THE WITNESS: Correct.

23 THE ADMINISTRATIVE LAW JUDGE: Thank you.

24 MR. McAFEE: Thank you.

25

1 BY MR. McAFEE:

2 Q. Do you remember the weather conditions on  
3 the day you were there on March 11, 2008?

4 A. Yes.

5 Q. And what were they?

6 A. As I recall, it was clear and cold.

7 Q. And probably with some of the detailed  
8 weather information we have in the file, although I'm  
9 answering my own question as I ask it, we have fairly  
10 detailed weather information in the record here, but  
11 that may not go to--extend to March of 2008. It  
12 might end in 2007.

13 Q. So would there be anything in the record  
14 that you're aware of that would give us the weather  
15 conditions on that day?

16 A. I'd have to refer to the data to answer  
17 that.

18 Q. All right. Well, maybe if we have a chance  
19 we might take a look. Maybe we can take a short  
20 break and double-check that rather than take the time  
21 on the record.

22 Q. When you say "cold," describe what you mean  
23 for me by "cold."

24 A. It was probably approximately 30 degrees.

25 Q. And what time did you arrive?



1           A.    It was in the morning, I would say, sometime  
2 around 8 a.m.

3           Q.    Do you remember if it was sunny?

4           A.    It seemed to--I seem to recall it was partly  
5 cloudy to sunny, yeah.

6           Q.    And how long were you there?

7           A.    I was probably there an hour, hour and a  
8 half.

9           Q.    And was Don Hamera with you the entire time?

10          A.    He was.

11          Q.    And did he accompany you on the photos you  
12 took? Was he right there with you, or did he do  
13 something else?

14          A.    He stayed in the car or the truck.

15          Q.    So when you were taking these photos that we  
16 will go through and that you previously testified to,  
17 he was not right there with you?

18          A.    Well, there were a lot of photos. I would  
19 say that he was with me on a portion of the photos I  
20 took on that trip.

21          Q.    But the ones where you were out in the--  
22 Did you drive out in the field with your pickup?

23          A.    Yes.

24          Q.    Okay. So he would have been with you there  
25 as you drove?

1           A.     He was-- We drove into the field with the  
2 pickup, we stopped, I got out and I took the photos.

3           Q.     Okay. Was there-- Were there melting  
4 conditions or runoff occurring while you were there  
5 that day?

6           A.     I would say that the temperature was--it was  
7 just beginning to thaw. The surface was just  
8 beginning to thaw as the sun became warmer.

9           Q.     Was the unnamed tributary flowing that day?

10          A.     Yes.

11          Q.     And did you also go down--I use the word "go  
12 down"--did you go look at Elliot Creek also that day?

13          A.     Yes.

14          Q.     What did you do at Elliot Creek?

15          A.     Observed it at multiple points, both above  
16 and below Mr. Vos' facility.

17          Q.     Okay. You've said you observed Elliot Creek  
18 both above and below his facility. Well, maybe we  
19 should just go through the photos. I want to make  
20 sure I understand what you mean by that.

21                   I just-- I think I'll start with this, and  
22 then we'll go through more detail with the photos,  
23 and we'll go through Exhibit 28 Pollard.

24                   Did you take any water samples of any kind  
25 that day on March 11, 2008?

1 A. No.

2 Q. Okay. Can we have you take a look at  
3 Exhibit 28 Pollard.

4 A. Yes. Okay.

5 Q. I don't know that we'll need the overhead.  
6 If we do we'll fire it up, but let's just start by  
7 going through the photos.

8 A. Okay.

9 Q. Photo No. 1 of Exhibit 28 Pollard has the  
10 description--could you read the description for the  
11 Court, please.

12 A. "Unnamed tributary to Elliot Creek just  
13 south of 100th Street facing east. Photo also shows  
14 frozen runoff between feedlot and tributary. There  
15 is evidence that runoff is coming from feedlot pens  
16 as well as the west sedimentation."

17 Q. Okay. When you make the description you  
18 have on this photo, when you say there was evidence  
19 that runoff was coming from the feedlot pens, as well  
20 as the west sedimentation, there's several things in  
21 that statement I want to go through with you.

22 When you state that runoff was coming from  
23 the feedlot pens, was it happening that day?

24 A. There was indication to me that there was  
25 runoff present, frozen, coming from the pen.

1 Q. All right. I just want to clarify that. As  
2 you were there that day, there was not actual runoff  
3 occurring, liquid actually moving that day when you  
4 were there?

5 A. I did not observe any liquid moving at that  
6 time.

7 Q. Okay. So in photo No. 1 when you say that  
8 there was evidence that runoff was coming from the  
9 feedlot pens, you testified that it was frozen; is  
10 that correct?

11 A. It appeared to be frozen.

12 Q. And so that would indicate it happened on a  
13 previous day?

14 A. I don't understand the comment.

15 Q. I'll just move forward. Maybe we can work  
16 through this.

17 THE ADMINISTRATIVE LAW JUDGE: Well, don't  
18 give up. I understand what you're driving at. I  
19 mean--

20 MR. McAFEE: Okay. Well, I was thinking  
21 that I would try to come at it from a different  
22 direction.

23 THE ADMINISTRATIVE LAW JUDGE: Sure, however  
24 you want to do it.

25

1 BY MR. McAFEE:

2 Q. Mr. Pollard, what I'm trying to determine  
3 here was you say the runoff was frozen, which  
4 indicates to me that--and you said it wasn't  
5 currently moving while you were there. So my point  
6 is you did not actually see it coming from the  
7 feedlot as you were there that day, actually moving  
8 out of the feedlot; is that correct?

9 A. Correct.

10 Q. Okay. So that would indicate to me it had  
11 happened on a previous day, whenever that was, but it  
12 didn't happen on the day you were there, while you  
13 were there?

14 A. While I was there?

15 Q. Yes. I'm not trying to be tricky here. I  
16 apologize if some of my questions may seem like they  
17 are. I'm just trying to determine what actually was  
18 occurring when you were there. And when you use the  
19 terms that "runoff was coming from," I want to make  
20 sure that that's not in the active tense, but rather  
21 something that had happened that you observed as  
22 frozen.

23 Okay. That's what I'm trying to determine.  
24 You've indicated that is the case, it was frozen,  
25 which indicated that it had happened previous to you

1 arriving; correct?

2 A. Repeat the question.

3 THE ADMINISTRATIVE LAW JUDGE: It's the same  
4 question. But go ahead, repeat it.

5 BY MR. McAFEE:

6 Q. I'm trying to ascertain that when you use  
7 the description that there was evidence that runoff  
8 was coming from the feedlot pens, that that is not in  
9 the active tense. It was not occurring as you were  
10 there. It had occurred before you arrived; correct?

11 A. That's correct.

12 Q. All right. Now, let's talk about the term  
13 "runoff." I believe this photo is a little hard to  
14 see because I asked you if it was sunny that day, and  
15 if you were there early in the morning looking to the  
16 east I think this photo tells us that because that  
17 appears to be the glare of the sun.

18 THE ADMINISTRATIVE LAW JUDGE: Well, let's  
19 ask a question. Ask a question, all right.

20 MR. McAFEE: All right. I apologize, Your  
21 Honor. I will move right into it.

22 BY MR. McAFEE:

23 Q. The runoff that I can see with the glare of  
24 the sun here, to me it looks like snow melt runoff.  
25 What did you observe that day?

1           A.     It appeared to be runoff of some sort coming  
2 from the terrace area, as well as--well, it was  
3 coming from the terrace area.

4           Q.     Was there snow on the terrace area?

5           A.     There was snow on it, yes.

6           Q.     So could that have been snow melt from the  
7 terrace area?

8           A.     Possible.

9           Q.     Okay. Do you believe that it was pollutants  
10 from the feedlot?

11          A.     I wasn't able to determine that.

12                   THE ADMINISTRATIVE LAW JUDGE: You were not  
13 able, is that what you said, you were not?

14                   THE WITNESS: Yes, I was not able to  
15 determine that, were not.

16 BY MR. McAFEE:

17          Q.     Were you able to determine that it was  
18 actually coming from the feedlot pen?

19          A.     Well, the photograph 1 is documenting--what  
20 I was doing here was documenting the runoff and the  
21 channelized flow path from the terrace to the unnamed  
22 tributary.

23                   THE ADMINISTRATIVE LAW JUDGE: But your  
24 question really wasn't answered. Do you want to have  
25 the question repeated?

1 THE WITNESS: Yes.

2 (Last question read by the reporter.)

3 THE ADMINISTRATIVE LAW JUDGE: That's a yes  
4 or a no.

5 A. No.

6 BY MR. MCAFEE:

7 Q. You also state in your description "as well  
8 as the west sedimentation." Do you mean the  
9 sedimentation basin?

10 A. Yes; the basin was cut off by the label, was  
11 not included when I generated the photo label.

12 Q. And I have a similar question there. Were  
13 you able to determine that the runoff was actually  
14 coming from the west sedimentation basin?

15 A. I determined that there was evidence that  
16 runoff was coming from that sedimentation basin.

17 Q. From the inside of the basin, from the  
18 contents of the basin?

19 A. It was coming from the berm of the basin.

20 Q. Okay. Now, berms have both an outside and  
21 an inside, and it appears from this photo there was  
22 snow on the outside of the berm?

23 A. Correct.

24 Q. Was the runoff coming from the outside of  
25 the berm?



1 A. Possibly.

2 Q. Could you tell and did you walk up there to  
3 see if the runoff was coming from the inside of the  
4 basin, which would mean that it would be the basin  
5 contents?

6 A. I did not.

7 Q. Did you determine if there were any cattle  
8 in that portion of the feedlot that drains that  
9 direction?

10 A. I don't recall that I did that day, no.

11 Q. Okay. Let's move on to photo 2, please. I  
12 believe on this photo that your description does not  
13 indicate anything other than that it's a culvert.  
14 However, in--this is Exhibit 28 Pollard, of course,  
15 which has yellow lines on it from your indication of  
16 where you believe the runoff was occurring; is that  
17 correct?

18 A. That does indicate the direction that the  
19 channelized flow path was taking to the unnamed  
20 tributary.

21 Q. Okay. Let's take it a step at a time here.  
22 There are three yellow lines on this photo; is that  
23 right?

24 A. That's correct.

25 Q. The first yellow line to the left is in the

1 cornfield, and do you recall if you saw any actual  
2 runoff occurring at that yellow line that day?

3 A. Again, I did not--no, I did not see any  
4 actual runoff.

5 Q. And would that be the same for the yellow  
6 line going down the bank of the unnamed tributary?

7 A. Yes.

8 Q. And then the third yellow line, of course,  
9 is just indicating the direction of the unnamed  
10 tributary?

11 A. Yes.

12 Q. Let's look at photo 2 and 3 together, if we  
13 could. Isn't photo 3 a photo of the same area from a  
14 different angle?

15 A. Yes.

16 Q. And again, in photo 3 is it your testimony  
17 that there was no runoff actually occurring while you  
18 were there?

19 A. I don't recall testifying to that. The  
20 testifying was related to the presence of a  
21 channelized flow path in the photo.

22 Q. Then I'll ask--I'll directly ask the  
23 question. In photo 3 is that a photo showing runoff  
24 actually occurring, liquid moving while you took the  
25 photo?

1 A. There was no liquids moving.

2 Q. And granted the-- I'm not talking about the  
3 unnamed tributary, I'm talking about what's coming  
4 down that you have indicated in the channelized flow  
5 path. You've indicated there was no movement in the  
6 channelized flow path while you were there?

7 A. Not that I observed.

8 Q. Now, you believe that that is a channelized  
9 flow path. Let's look at photo 3. The line coming  
10 down the bank, what leads you to believe that's a  
11 channelized flow path?

12 A. Because there is a deposition of soil or  
13 manure or other solids all along the bank there.  
14 It's in one confined location.

15 Q. I'm sorry. Go ahead. What is in one  
16 confined location?

17 A. The darker material that's been deposited on  
18 top of the snowbank.

19 Q. And is it your testimony--I'm looking at  
20 photo 3--the yellow line that goes down the bank to  
21 the unnamed tributary--

22 A. Yes.

23 Q. --is it your testimony that that photo at  
24 that location shows deposits, I'll call it for now?

25 A. Yes.

1 Q. And is it your testimony that those deposits  
2 came from the feedlot?

3 A. No.

4 Q. What is your testimony regarding those  
5 deposits that you have testified to?

6 A. I wasn't able-- I mean, I didn't at that  
7 time make a determination of where those came from.

8 Q. And help me. I just want to make sure I  
9 understand. What tells you when you look at this  
10 photo that there are deposits there, because I'm not  
11 seeing that?

12 A. It's basically the presence of a dark  
13 colored material on top of the snowbank in various  
14 areas there, and it's actually begun to melt in that  
15 area. But you can see, and I saw when I was there,  
16 that there was debris deposited on top of the snow,  
17 which indicated to me that material was flowing over  
18 it.

19 Q. And that would be again in photo No. 3 where  
20 the yellow line is going down the bank towards the  
21 unnamed tributary?

22 A. In that general area, yes.

23 Q. Now, there is dead vegetation there; is that  
24 correct?

25 A. There does appear to be, yes.

1 Q. And there is some snow there also; correct?

2 A. Yes.

3 Q. If you saw deposits there, did you attempt  
4 to take a closer photo?

5 A. That's the only photo I took of that.

6 Q. Did you go over and examine what that was  
7 any closer?

8 A. I walked up to it, yes.

9 Q. And what did you see?

10 A. Again, it was the deposition of solid  
11 material on top of the--of that snowbank that was  
12 there.

13 Q. Did you have your camera with you when you  
14 walked over there?

15 A. Yeah.

16 Q. But did you take a photo when you were right  
17 up next to it?

18 A. No, I did not.

19 Q. Did you take a sample of it while you were  
20 there?

21 A. No.

22 Q. In doing an investigation such as this,  
23 would it--do you ever take samples?

24 A. We have, yes.

25 Q. And by "we," do you--

1 A. EPA.

2 Q. Pardon me?

3 A. EPA.

4 Q. How about you individually, have you taken  
5 samples doing an investigation like this?

6 A. Yes.

7 Q. Okay. Can we take a look at photo 4. I  
8 guess I apologize. I don't need to cover anything  
9 there. Let's go to photo 5, please, of Exhibit 28  
10 Pollard.

11 THE ADMINISTRATIVE LAW JUDGE: Let's go off  
12 the record for a second.

13 (Off-the-record discussion.)

14 THE ADMINISTRATIVE LAW JUDGE: Back on the  
15 record. So you were going to talk next about photo  
16 5, counsel?

17 MR. McAFEE: That's correct, yes.

18 BY MR. McAFEE:

19 Q. Steve, if you have that photo there, your  
20 description on the photo indicates that it shows the  
21 channelized flow from pens west of approximately 100  
22 yards before it enters the unnamed tributary. And  
23 you've placed yellow lines on there to that effect.

24 I guess I want to make sure, does this photo  
25 show us anything other than the channelized flow

1 paths? Does this photo show us anything regarding  
2 pollutants or any other runoff from the feedlot?

3 A. There's some liquid present in the channel  
4 that's frozen, but other than that, no.

5 Q. And was that-- When this photo was taken,  
6 was that liquid frozen?

7 A. Yes.

8 Q. I'd like to move to photo 6, and I believe  
9 you testified fairly in detail and extensively about  
10 what this depicts at the feedlot. I would like to  
11 ask you regarding the feedlot on kind of the  
12 right-hand side of the photo.

13 As an old farm boy, I think I can identify  
14 cowpies when I see them. Is that what you see there?

15 A. Yes.

16 Q. Is there any other manure present in this  
17 photo that you see?

18 A. In addition to what's present in the photo,  
19 no.

20 Q. Okay. And again, I'm not trying to--these  
21 are not trick questions, I'm just trying to determine  
22 what this photo depicts because you were the one who  
23 was there and took it.

24 A. Yes.

25 Q. Would you characterize a feedlot with that

1 amount of manure there in this portion--all we can  
2 talk about is what you have a photo of--would you  
3 characterize that as being clean?

4 A. I would not say that based on this photo.

5 Q. And why wouldn't you say that?

6 A. There's a considerable amount of manure  
7 present there, and this is just a small portion of  
8 that one pen.

9 Q. Okay. And I've asked you what you see as  
10 far as manure there, so I won't go through that  
11 again. Did you see any cattle there? I know they're  
12 not in the photo, but did you see any cattle in this  
13 pen when you took this photo?

14 A. I can't recall.

15 THE ADMINISTRATIVE LAW JUDGE: Let me ask  
16 something so I can understand this, Mr. Pollard.  
17 You've talked about the manure which is depicted in  
18 photo 6; correct?

19 THE WITNESS: Yes.

20 THE ADMINISTRATIVE LAW JUDGE: And is all of  
21 the manure in that photo to the right side of the  
22 yellow lines and none on the left side? Do you see  
23 there are three yellow lines?

24 THE WITNESS: Correct.

25 THE ADMINISTRATIVE LAW JUDGE: So we can



1 bisect the photo into a left side and right side  
2 based upon the travel of those three yellow lines?  
3 And that's my question. Do you understand my  
4 question? Is there any manure, based on this photo  
5 or your recollection, on the left side of this line,  
6 or is the manure only on the right side?

7 THE WITNESS: The manure piles appear to be  
8 only on the right side.

9 THE ADMINISTRATIVE LAW JUDGE: Okay.

10 BY MR. McAFEE:

11 Q. I believe, Steve, now we can move to photo  
12 14, please.

13 A. Okay.

14 Q. This photo from the description indicates a  
15 flow path of runoff again. And I believe your  
16 testimony regarding this is it was above the terrace;  
17 is that correct?

18 A. That's correct.

19 Q. Okay. Where is the terrace in this photo?

20 A. I would say that it is about a third of the  
21 way down from the top of the photo.

22 Q. Okay. And there's a--you have a yellow line  
23 there in the middle of the photo, the uppermost  
24 yellow arrow.

25 A. Correct.

1 Q. Where is the terrace in relation to the  
2 point of that arrow?

3 A. It runs perpendicular to that arrow, for the  
4 most part, straight across the entire image.

5 Q. Is that arrow pretty much, then, touching  
6 the terrace?

7 A. Well, yeah, it's not exact.

8 Q. Okay. But roughly that's where the terrace  
9 is there?

10 A. Right.

11 Q. We can kind of see a discoloration or darker  
12 area across the photo?

13 A. Correct.

14 Q. Okay. Now, you state in your description  
15 that--you say in the last sentence, "From there it  
16 overflows the terrace and continues flowing  
17 southwest." From this photo can you tell me where it  
18 overflows?

19 A. From that photo I believe the point at which  
20 it overflowed was more towards the right of the  
21 image.

22 Q. And does it show a channel in this photo  
23 where it overflows?

24 A. No.

25 Q. How can you determine from this photo that

1 it overflows the terrace?

2 A. When I took the photo, I hadn't made that  
3 determination yet.

4 THE ADMINISTRATIVE LAW JUDGE: Had or had  
5 not?

6 THE WITNESS: Had not.

7 BY MR. McAFEE:

8 Q. Okay. So do we need to move to another  
9 photo, then, to determine if it overflowed?

10 A. Well, the determination was made--I mean I  
11 took the photo when I walked down and then I made the  
12 determination.

13 Q. All right. Well, let's move to photo 15,  
14 and maybe we can come back to 14. I just want to  
15 understand the description in the photo that will be  
16 in the record as to how you determined it overflowed  
17 the terrace.

18 Let's go to No. 15. And as I recall your  
19 testimony, you were standing below the terrace or on  
20 the terrace.

21 A. At the base of the terrace.

22 Q. Pardon me?

23 A. At the base.

24 Q. By the base do you mean--just so we're clear  
25 in the record--that you were on the lower side of the

1 terrace?

2 A. Correct.

3 Q. Okay. And so you took this photo showing a  
4 flow path leading away from the terrace?

5 A. Correct.

6 Q. I guess what I don't see here is a  
7 connection between above and below the terrace where  
8 it overflowed. And can you help me understand that  
9 from your testimony.

10 A. Well, the first photo showed the runoff  
11 going to the terrace, and the second photo was taken  
12 at the base of the terrace showing where runoff went  
13 from the point at the base of the terrace on down  
14 into the field.

15 Q. But you don't actually have a photo showing  
16 it either going through or over the terrace?

17 A. No, I don't.

18 Q. Did you observe that?

19 A. Yes.

20 Q. Was there a channel through the terrace?

21 A. Yeah. Yes.

22 Q. But yet we don't have a photo of that;  
23 correct?

24 A. No, we don't.

25 Q. And that would have been approximately right

1 where you were standing when you took photo 15?

2 A. It's in the approximate location.

3 Q. Okay. Let's move to photo 16. I believe  
4 now we are on the south side of the feedlot; is that  
5 correct?

6 A. Photograph 16, yes.

7 Q. We, in general looking at this photo, are on  
8 the south side of the feedlot. Before you were  
9 showing us the southwest portion of the feedlot with  
10 those photos; correct?

11 A. Correct.

12 Q. And, of course, there's a photo index that  
13 will be in the record to show exactly where this  
14 photo was taken from. When you took photo 16, you  
15 were facing the feedlot. I don't see any cattle in  
16 that photo, do you?

17 A. There is cattle present.

18 Q. Okay. And help me out. Where do you see  
19 them?

20 A. I misstated that. That's not cattle.

21 THE ADMINISTRATIVE LAW JUDGE: It's what?

22 THE WITNESS: I was mistaken. There are no  
23 cattle present.

24 BY MR. McAFEE:

25 Q. Okay. Do you see manure present? Let's

1 start with it appears with the fence post there, that  
2 that's the edge of the feedlot. Do you see any  
3 manure present on the other side of that fence  
4 depicted by the fence post?

5 A. Yes.

6 Q. And where do you see that?

7 A. I mean, it's a feedlot pen, and that's going  
8 to contain manure.

9 Q. Would it contain manure if it had been  
10 scraped?

11 A. Yeah.

12 Q. Tell me what you mean by that.

13 A. I mean, a scraping of manure is not going to  
14 get all of the manure out of the pen. It could  
15 potentially remove a portion of it, but there's still  
16 going to be manure present. It's a feedlot pen.

17 Q. Well, I just-- All right. In looking at  
18 this photo, do you see evidence of manure, visual  
19 evidence of manure in that feedlot pen?

20 A. I think that the--there is evidence, yeah,  
21 that there is manure in that pen.

22 Q. Is it-- Now, before when we looked at  
23 photo--the previous photo we discussed--and I'm  
24 sorry, I'm looking for it right now--photo No. 6, we  
25 discussed the evidence of manure there. Do you see

1 similar evidence of manure in photo 16?

2 A. I see brown piles in photo 16 that could be  
3 manure.

4 Q. And where do you see those?

5 A. On the right portion below the label there's  
6 a pile of solids that could be manure. There's dark  
7 piles there that could be manure.

8 Q. Other than that, do you see any evidence of  
9 manure?

10 A. Besides the fact that it's a feedlot pen, so  
11 anyplace in that pen could contain manure.

12 Q. I understand that, Steve. I'm just asking  
13 you if you see evidence in this photo?

14 A. Yes, I see evidence in this photo that  
15 there's manure in that pen.

16 Q. Other than on that right-hand side that you  
17 described for us, do you see evidence of manure in  
18 this feedlot pen?

19 MR. RYAN: Objection, asked and answered.  
20 He's asked it three times, he's answered it three  
21 times.

22 THE ADMINISTRATIVE LAW JUDGE: Not really.  
23 I'm allowing the question. I'm looking at this  
24 intently, and I don't know whether it would be  
25 helpful, or not, but where exactly this witness sees

1 that.

2           Wouldn't it have been useful to mark that on  
3 an exhibit? Because it's unclear to me whether he's  
4 looking on the feedlot pen itself or south of it or  
5 where. I don't know what this is we have the witness  
6 observing.

7           MR. McAFEE: Your Honor, maybe it would be  
8 helpful at this point to use the projector and to  
9 mark the exhibit. May I?

10           THE ADMINISTRATIVE LAW JUDGE: Yes.

11           MR. McAFEE: Can we go off the record?

12           (Off-the-record discussion.)

13           THE ADMINISTRATIVE LAW JUDGE: Back on the  
14 record.

15 BY MR. McAFEE:

16           Q. Steve, we now have--I don't have an exhibit  
17 now--but we now have photo No. 15--

18           THE ADMINISTRATIVE LAW JUDGE: 16, I think.

19 BY MR. McAFEE:

20           Q. --16.

21           MR. McAFEE: If it's all right with the  
22 Court, I will stand here and then we'll get through  
23 this exhibit.

24           Q. We are now looking at photo No. 16, and I  
25 would like to have you mark this exhibit with one of



1 the pens we've been using--

2 A. Okay.

3 Q. --as to where you see manure in that photo  
4 in the feedlot which is on the other side of that  
5 fence post.

6 A. Well, the area of concern that I was  
7 referring to previously is in this area (indicating).  
8 Do you want me to mark it?

9 Q. Yes, please.

10 A. (Witness marks on exhibit.)

11 Q. Okay. And, Steve, when you say the area you  
12 were concerned about, let's make sure the record is  
13 clear. What do you see there?

14 A. I see material that could possibly be  
15 manure.

16 Q. When you took this photo, did you go over  
17 there to look at it closer?

18 A. No, I did not.

19 Q. Okay. At the time you took this photo, did  
20 you make the determination that that was possibly  
21 manure?

22 A. No.

23 Q. Okay. What other areas in the photo, if  
24 any, do you believe you see manure?

25 A. In my experience, professional experience

1 with CAFOs, any portion of a feedlot pen could  
2 contain manure. It doesn't have to be in piles. It  
3 can be pulverized into a powder form.

4 THE ADMINISTRATIVE LAW JUDGE: Let me stop  
5 you. I don't think counsel asked you a general  
6 question about what your experience is. He was  
7 asking you about this photo.

8 Am I correct?

9 MR. McAFEE: Yes, Your Honor.

10 THE ADMINISTRATIVE LAW JUDGE: So just  
11 confine your answer to this photo.

12 Your question was any other areas; is that  
13 right?

14 MR. McAFEE: Yes.

15 A. Yes, it would be the whole pen.

16 THE ADMINISTRATIVE LAW JUDGE: Everywhere?

17 THE WITNESS: In the pen, yes.

18 BY MR. McAFEE:

19 Q. That visual observation is made from this  
20 photo?

21 A. Yeah.

22 Q. What did you see-- Just for purposes of the  
23 record, do you know what that is in the middle of the  
24 photo between the two yellow arrows, the two yellow  
25 arrows on the right, I'll say? There is a stretch in

1 the middle of that. Do you know what that is?

2 A. It appears to be a feed bunk.

3 Q. When you were there that date, did you  
4 observe any feed in or near the feed bunk?

5 A. No.

6 Q. And do you observe any of that as we look at  
7 it today?

8 A. I didn't look at it.

9 Q. No, today. Do you observe anything today in  
10 the photo?

11 A. I can't determine from the photo what was in  
12 the feed bunk.

13 Q. Okay. Can you see from the photo if there's  
14 any feed or anything else, manure or anything around  
15 the feed bunk from the photo?

16 A. Directly around the feed bunk, no.

17 Q. I want to clarify. Do you see any cattle in  
18 the photo?

19 A. No.

20 Q. Okay. Well, let me-- Before we move on,  
21 let me--I want to talk about what's in the photo  
22 depicted by the longer yellow line, the lower yellow  
23 line. The long one, is that depicting a flow path?

24 A. It's indicating the direction of a flow  
25 path, yes.

1 Q. Okay. And do you see any manure in that  
2 flow path?

3 A. Not directly, no.

4 Q. Thank you. Did you--

5 THE ADMINISTRATIVE LAW JUDGE: Now, you're  
6 going to give that exhibit a number; right?

7 MR. McAFEE: Yes, Your Honor, thank you for  
8 reminding me. I will take this exhibit back to be  
9 placed here with the witness exhibit list. I will  
10 then take this exhibit that has been marked on, and  
11 this is Exhibit 28 Pollard.

12 THE ADMINISTRATIVE LAW JUDGE: But you'll  
13 have to give it another name.

14 MR. McAFEE: Yeah. I'm just trying to get  
15 in the right area here. So it's photo 16 of 28  
16 Pollard. May we go off the record for a minute?

17 THE ADMINISTRATIVE LAW JUDGE: Yes.

18 (Off-the-record discussion.)

19 MR. McAFEE: I will move--

20 THE ADMINISTRATIVE LAW JUDGE: Back on the  
21 record.

22 MR. McAFEE: We have what will be labeled as  
23 Respondent's Exhibit 15, and it is photo 16 from  
24 Complainant's Exhibit 28 Pollard, which has been  
25 marked on by the witness, Mr. Steve Pollard, as

1 presented in the record here. And I move that  
2 exhibit for admission.

3 MR. BREEDLOVE: No objection, Your Honor.

4 THE ADMINISTRATIVE LAW JUDGE: Respondent's  
5 Exhibit 15 is admitted.

6 (Respondent's Exhibit 15  
7 was received in evidence.)

8 BY MR. McAFEE:

9 Q. Could we move to photo 17 now, Steve, in  
10 Complainant's Exhibit 28 Pollard.

11 A. Photo 17?

12 Q. Yes, please.

13 A. Okay.

14 Q. Steve, photo 17 shows a channelized flow  
15 path. Is there any manure that you observe in that  
16 exhibit or anything else that you would characterize  
17 as a pollutant from the feedlot?

18 A. No.

19 Q. Photo 18, same question. It depicts a  
20 runoff path. Does that photo show any manure or  
21 other feedlot pollutant?

22 A. Photo No. 18?

23 Q. That's correct.

24 A. No.

25 Q. Photo 19 again shows a flow path that you

1 have testified to previously. Photo 20 shows a flow  
2 path down through Respondent's cornfield.

3 THE ADMINISTRATIVE LAW JUDGE: Is it  
4 Respondent's cornfield, as well?

5 MR. McAFEE: Yes, I guess that's not in the  
6 record yet because Respondent has not testified yet.

7 THE ADMINISTRATIVE LAW JUDGE: You represent  
8 that that's what you believe he'll testify to?

9 MR. McAFEE: Yeah. I could ask Mr.--Steve.

10 BY MR. McAFEE:

11 Q. Is it your understanding that this is  
12 Respondent's cornfield that is shown in these photos?

13 A. That's my understanding.

14 Q. Okay. Do both of these photos, photos 19  
15 and 20, do they show any manure or other feedlot  
16 pollutant, in your opinion?

17 A. No.

18 Q. Photo 21, it would be the same for that  
19 photo?

20 A. Yes.

21 Q. And photo 22?

22 A. Can I ask for clarification?

23 Q. Sure.

24 THE ADMINISTRATIVE LAW JUDGE: Yes, but you  
25 can't have a dialogue with counsel. You can say "I

1 don't understand your question," but you can't be  
2 asking Mr. McAfee questions.

3 THE WITNESS: Okay.

4 THE ADMINISTRATIVE LAW JUDGE: It's like  
5 jeopardy, there is a certain way the questions are  
6 phrased.

7 THE WITNESS: That's okay. Repeat the  
8 question, please.

9 BY MR. McAFEE:

10 Q. Okay. I believe we're on photo 22.

11 A. Okay.

12 Q. Photo 22 shows, as have the previous photos,  
13 flow path depicted by your yellow lines that you've  
14 placed on the photo. The caption mentions nothing  
15 about the presence of manure or runoff or any feedlot  
16 pollutant.

17 My question is does photo 22 show any  
18 evidence of anything other than a flow path and not  
19 show any evidence of manure or any other feedlot  
20 pollutant?

21 A. It does not show evidence.

22 Q. Okay. Thank you.

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

25 THE ADMINISTRATIVE LAW JUDGE: Sure. Let's

1 go off the record.

2 (Off-the-record discussion.)

3 THE ADMINISTRATIVE LAW JUDGE: We'll resume  
4 tomorrow morning at 9:30.

5 Did you ask something, Mr. Ryan?

6 MR. RYAN: 9:30 would be fine. We can start  
7 earlier if you would like.

8 But I have a question, are we--given that  
9 he's still under oath, are we, the counsel, allowed  
10 to speak with him regarding his testimony between now  
11 and tomorrow morning?

12 THE ADMINISTRATIVE LAW JUDGE: You know,  
13 particularly when he's under cross-examination, that  
14 gives me some angst. I don't think it's appropriate.

15 MR. RYAN: We purposely did not talk to  
16 Mr. Sena during lunch. I just wanted some  
17 clarification. We should refrain from speaking to  
18 Mr. Pollard?

19 THE ADMINISTRATIVE LAW JUDGE: That's the  
20 way I prefer to go, and I feel quite strongly about  
21 that. Otherwise, it amounts to--not coaching, but it  
22 depends what's asked. I'd rather you deal with it on  
23 direct examination for things that you feel--if you  
24 feel it's necessary.

25 MR. RYAN: That's fine, Your Honor. I just.



1 wanted to make sure we're all clear.

2 THE ADMINISTRATIVE LAW JUDGE: The same will  
3 apply to your witnesses, Mr. McAfee, okay? We're all  
4 set?

5 MR. McAFEE: Yes.

6 THE ADMINISTRATIVE LAW JUDGE: You agree  
7 with what I just said?

8 MR. McAFEE: Yes.

9 THE ADMINISTRATIVE LAW JUDGE: See you all  
10 tomorrow morning at 9:30.

11 (Recess at 4:55 p.m., until 9:30 a.m.,  
12 Tuesday, September 16, 2008.)

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## C E R T I F I C A T E

I, the undersigned, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that I acted as the official court reporter at the hearing in the above-entitled matter at the time and place indicated;

That I took in shorthand all of the proceedings had at the said time and place and that said shorthand notes were reduced to typewriting under my direction and supervision, and that the foregoing typewritten pages are a full and complete transcript of the shorthand notes so taken.

Dated at Des Moines, Iowa, this 19th day of September, 2008.

  
CERTIFIED SHORTHAND REPORTER