

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
POVERTY KNOB FARM, INC.)
)
)
)
Respondent.)

Docket No. CWA-07-2008-0030

**RESPONDENT'S INITIAL
PREHEARING EXCHANGE**

COMES NOW the Respondent, Poverty Knob Farm, Inc., by and through his attorney, Eldon L. McAfee, and for its Initial Prehearing Exchange states:

1. a. At this time, Respondent does not intend to call any expert witnesses. Expert witnesses, including witnesses in reply or rebuttal, will be provided as a supplement to this Initial Prehearing Exchange as provided by the Prehearing Order and 40 C.F.R. §22.19. Respondent reserves the right to call any expert witnesses designated by Complainant.

b. Other witnesses Respondent intends to call:

(1) Jon Schubert, Respondent. Mr. Schubert is expected to testify as to the fact that Poverty Knob Farm, Inc. is a newly defined CAFO pursuant to 40 C.F.R. section 122.23(g)(2), was in compliance with federal EPA CAFO regulations in effect prior to April 14, 2003, and was therefore not required to have an NPDES permit until July 31, 2007. Further, Jon is expected to testify that his operation has not had an actual discharge of pollutants in violation of the Clean Water Act. Further, Jon is expected to testify about the lack of economic benefit he received by not building runoff control structures.

(2) Witnesses, including witnesses in reply or rebuttal, will be provided as a supplement to this Initial Prehearing Exchange as provided by the Prehearing Order and 40 C.F.R. §22.19. Respondent reserves the right to call any witnesses designated by Complainant.

c. At this time, Respondent does not intend to introduce any documents or exhibits into evidence. Documents or exhibits, including documents or exhibits in reply or rebuttal, will be provided as a supplement to this Initial Prehearing Exchange as provided by the Prehearing Order and 40 C.F.R. §22.19. Respondent reserves the right to introduce into evidence any documents or exhibits Complainant lists as intending to be introduced into evidence.

2. This paragraph is not applicable to Respondent.

3. Respondent's defense does not admit liability.

4. Respondent has notified EPA that it is unable to pay the proposed penalty and/or that the proposed penalty will have an adverse impact on the Respondent's ability to continue in business. Respondent has submitted the requested documentation to EPA and EPA has rejected Respondent's submissions. However, Respondent has recently been requested by EPA to submit updated financial information as a result of any changed financial conditions subsequent to the initial submissions. Respondent will continue to work with EPA regarding this issue.

5. This paragraph is not applicable to Respondent.

6. Respondent submits that the hearing in this case should be held in Des Moines, Polk County, Iowa. Respondent is available for the hearing during the months

of November or December. Respondent estimates that the time needed for his direct case will be 1/2 day.

7. Although Respondent has filed this Initial Prehearing Exchange, Respondent's direct case will be limited and Respondent's case will primarily consist of Dated this 11th day of July, 2008.

BEVING, SWANSON & FORREST, P.C.



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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause herein at their respective addresses disclosed on the pleadings of record on the 11th day of July, 2008.

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

Signature: Nancy Franklin

Original and one copy to:

Kathy Robinson
Regional Hearing Clerk
U.S. EPA
901 North 5th Street
Kansas City, KS 66101

A copy by regular U.S. Mail to:

Judge William B. Moran
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave., N.W.
Mail Code 1900L
Washington, D.C. 20005

A copy by regular U.S. mail to:

J. Daniel Breedlove
Asst. Regional Counsel
U.S. EPA
Region VII
901 North 5th Street
Kansas City, KS 66101

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