



5. Provide the factual basis for the assertion in paragraph 12 of the complaint that Respondent's Facility is a "concentrated animal feeding operation" as defined in 40 C.F.R. § 122.23(b)(2), and is a point source according to Section 502(14) of the Act, 33 U.S.C. § 1362(14)

6. State the factual basis, including documents, summaries of testimony, and photographs, for the assertion in paragraph 16 of the complaint that the South Side Canal, which originates outside of and passes over, across, or through Respondent's Facility and flows into the C.J. Strike Reservoir (which flows into the Snake River - an interstate water), is a navigable water as defined in Section 502(7) of the CWA, 33 U.S.C. 1362(7), and part of the waters of the United States as defined by 33 U.S.C. 1362(7) and 40 C.F.R. § 122.2. Provide the information, including summaries of testimony, documents, and photographs to support the conclusion that the South Side Canal conveys pollutants from Respondent's Facility to the C.J. Strike Reservoir

7. State the factual basis, including any documents, summaries of testimony, and photographs, charts, or maps for the allegation in paragraph 17 of the complaint that the Facility's North Pens have discharged process wastewater in to the South Side Canal at least 13 times in the last five years and that these pollutants flow into the C.J. Strike Reservoir and waters downstream of the Reservoir. Respond to the assertion in paragraph 10 of the answer that Respondent conducted maintenance of the berm in the fall of 2005 and has since built up the berm prior to the filing of EPA's complaint so that no further discharges will occur.

8. State the factual basis, including photographs, documents, maps or charts and summaries of testimony, for the allegations in paragraph 18 of the complaint that the Facility's South Pens discharge process wastewater to a field and a pond to the north of the South Pens, which overflows and enters a tributary to the C.J. Strike Reservoir. Identify the tributary and explain where it flows into the C.J. Strike Reservoir

9. State the factual basis, including documents, summaries of testimony, and photographs, maps or charts for the allegations in paragraph 19 of the complaint that on a daily basis for the last five years the Facility's Office Pens discharge process wastewater into the South Side Canal which flows into the C.J. Strike Reservoir and into waters downstream of the Reservoir

10. Provide the factual basis for the assertion in paragraph 20 of the complaint that each day the horses referred to therein have come into contact with the South Side Canal resulted in discharges of process wastewater to the waters of the United States. Respond to the assertion that despite numerous inspections over the past 30 years by EPA and State agencies, Respondent had never been informed that the presence of the horses violated the CWA.

11. Provide a copy of any documents supporting the assertion in paragraph 21 of the complaint that the process wastewater discharge from the Facility is a pollutant and contains pollutants defined under Section 502(6) of the Act, 33 U.S.C. § 1362(6).

12. Explain the basis for the assertion in paragraph 23 of the complaint that the alleged violations "constitute no fewer than one thousand eight hundred thirty eight (1,838) days of violations (at least 13 days for the North Pens, 1, 825 days for the Office Pens)"

13. Provide documents, summaries of testimony, or other information, for the assertion in paragraph 26 of the complaint that Respondent's alleged discharges of manure-laden animal waste to waters of the United States contain significant levels of both fecal coliform and *Escherichia coli* (*E. coli*) bacteria, which indicates a "possible presence of a number of pathogens (such as *E. coli* 0157:H7 and *Salmonella*) as well as parasites (such as *Cryptosporidium*)." State the factual basis for the assertion that the animal wastes in Respondent's alleged discharges cause illnesses resulting in gastroenteritis, fever, kidney failure, and even death. Provide the factual basis for the assertion that animal wastes have high nutrient levels that can cause decreased oxygen levels in receiving waters adversely impacting the development and maturity stages of many fish species indigenous to the Pacific Northwest (including salmon species listed as endangered or threatened under the Endangered Species Act).

14. Provide a copy of any documents supporting the assertion that the C.J. Strike Reservoir is listed by the State of Idaho as impaired for excess nutrients.

15. Specify the penalty Complainant is seeking in this proceeding. State the consideration, if any, given to Respondent's ability to pay the proposed penalty and provide a copy of any documents used in determining Respondent's ability to pay, if such a determination was made.

By Respondent:

1. If not provided in responses to specific items below, summarize any facts supporting denial of the violations alleged in the complaint.

2. Provide a copy of Respondent's NPDES permit for the Facility as noted in paragraph 4 of the answer and a copy of the 2003 application whereby Respondent sought permit coverage. State whether the application was submitted with 40 C.F.R. § 122.23(g)(1) in mind or with the view that the application would extend the provisions of the expiring permit. Provide a copy of any correspondence or other documents concerning the status of the permit application.

3. State the factual basis, including any documents, summaries of testimony, maps, charts, or photographs, for the assertion in paragraph 8 of the answer that the South Side Canal flows into the C.J. Strike Reservoir "[only] during certain times of the year." Identify those times.

4. State the factual basis for the assertion in paragraph 9 of the answer that the South Side Canal is neither a navigable water nor does it convey pollutants from Respondent's Facility.

5. State the factual basis for the assertion in paragraph 10 of the answer that during a significant precipitation event in December 2005, some runoff from the Facility's North Pens "could have discharged into the South Side Canal through a low area at the far north end of the North Pens." Provide documents, reports, or summaries of testimony for the assertions that Respondent conducted maintenance of the berm in the fall of 2005 and built up the area with a new berm "at the time of the unexpected and significant storm events in late December 2005." Provide photographs, summaries of testimony or other information supporting the assertion that

Respondent has since built up the berm prior to the filing of the complaint and that no further discharges will occur.

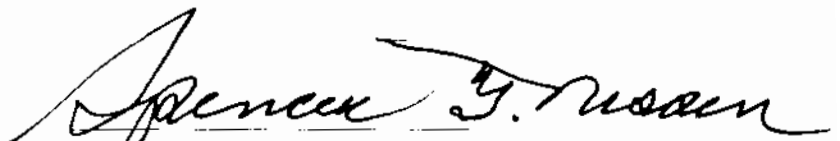
6. Provide the factual basis for the assertion in paragraph 11 of the answer that "[n]o discharge of process water from the South Pens has ever entered C.J. Strike Reservoir or any of its tributaries in the past five years."

7. Provide a copy of test results on samples referred to in paragraph 19 of the answer.

8. If Respondent is contending that any significant penalty would exceed his ability to pay, provide financial statements, copies of income tax returns or other data to support such contention.

Responses to this Order should be provided to the Regional Hearing Clerk, the other party, and to the undersigned on or before June 15, 2007.

Dated this 16<sup>th</sup> day of May, 2007.



Spencer T. Nissen  
Administrative Law Judge


<sup>6</sup> In accordance with Rule 22.5(c)(4), the parties are directed to promptly notify the Regional Hearing Clerk, all other parties, and the ALJ of any change in address and/or telephone number.

<sup>7</sup> The parties are informed that the use of E-Mail to communicate with this office is considered inappropriate.

In the matter of *Bruneau Cattle Co.*, Respondent.  
Docket No. CWA-10-2007-0016

CERTIFICATE OF SERVICE

I certify that the foregoing **Order**, dated May 16, 2007, was sent this day in the following manner to the addressees listed below.



Mary Angeles  
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

Carol Kennedy  
Regional Hearing Clerk  
U.S. EPA, Region X  
1200 Sixth Avenue  
Seattle, WA 98101  
Fx: 206.553.0163

One Copy by Facsimile and Certified Mail to:

Mark Ryan, Esq.  
Assistant Regional Counsel  
U.S. EPA, Region X  
Mail Stop 100 (Idaho Office)  
1435 North Orchard Street  
Boise, ID 83706  
Fx: 208.378.5744

One Copy by Facsimile and Certified Mail to:

Kevin J. Beaton, Esq.  
Stoel Rives LLP  
900 SW Fifth Ave., Suite 2600  
Portland, OR 97204  
Fx: 503.220.2480

**Dated: May 16, 2007**  
**Washington, D.C.**