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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

In the matter of:)	
)	
)	
Lowell Vos)	DOCKET NO. CWA-07-2007-0078
d/b/a Lowell Vos Feedlot)	
)	
Ida County, Iowa,)	
)	COMPLAINANT'S FIRST
)	SUPPLEMENTAL PREHEARING
Respondent.)	EXCHANGE
)	

Pursuant to 40 C.F.R. § 22.19 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22 (CROP) and the Presiding Officer's direction, Complainant United States Environmental Protection Agency (EPA) submits this First Supplemental Prehearing Exchange. Complainant filed its Prehearing Exchange on April 7, 2008.

I. Witnesses.

1. Stephen Pollard. In addition to the testimony described in Complainant's Prehearing Exchange, Mr. Pollard will testify as to his observations of Respondent's feedlot, Elliot Creek and its tributaries during a facility visit on or around July 1, 2008. Photographs taken by Mr. Pollard on July 31, 2008, are attached as Complainant's Exhibit 42.

2. Bryan Hayes. Mr. Hayes is a Fisheries Biologist who works for IDNR. Mr. Hayes has conducted a survey of aquatic life in Elliot Creek and the tributary of Elliot Creek. Mr. Hayes has conducted studies of many Iowa streams of similar size as Elliot Creek and its tributary. In his testimony Mr. Hayes is expected to compare and contrast his findings at Elliot Creek and its tributary with other aquatic studies. Mr. Hayes is expected to opine on the impact of discharges from Respondent's feedlot on the water quality and aquatic life in Elliot Creek, the unnamed tributary of Elliot Creek and the larger streams it flows into. Mr. Hayes' resume is attached as Complainant's Exhibit 43. IDNR's 2006 and 2007 Stream Fisheries Inventories are attached as Complainant's Exhibits 44 and 45.

3. Ryan Olive. Complainant does not expect to call Mr. Olive as a witness.
4. Lannie Miller. Mr. Miller will be unavailable during the week scheduled for hearing therefore Complainant does not expect Mr. Miller to testify.
5. Sandra Doty. In addition to the testimony described in Complainant's Prehearing Exchange, Ms. Doty will testify as to her observations of Respondent's feedlot, Elliot Creek and its tributaries during a facility visit on or around July 1, 2008. Ms. Doty's revised Discharge Report is attached as Complainant's Exhibit 43.
6. EPA reserves the right to call all fact witnesses named by Respondent.

II. Exhibits.

For purposes of the list of documents below, "Complainant's Exhibit" is abbreviated as "C ___." The documents themselves are labeled "Comp. Ex. No. XX"

- C42 July 1, 2008 photos of Respondent's feedlot, Elliot Creek and its tributaries.
- C43 SAIC Expert Discharge Report (revised August 11, 2008).
- C44 IDNR 2006 Stream Fisheries Inventory.
- C45 IDNR 2007 Stream Fisheries Inventory.
- C46 Record of Climatological Observations for Cherokee County, Iowa, Holstein County, Iowa, Le Mars County, Iowa, Ida Grove, 5NW, Iowa, Galva, Iowa, and Sioux City Gateway Airport for January 1, 1991- May 31, 2008.
- C47 Expert Opinion on Economic Benefit (revised August 15, 2008).
- C48 Resume Bryan T. Hayes.
- C49 Stream Fishkill Follow-up Assessment: Fish Community Results, Iowa Department of Natural Resources, February 2002.

III. Discussion of Proposed Penalty

Complainant has further refined its discharge and economic benefit analyses. Revised expert reports are attached as Complainant's Exhibits 43 and 47. Refinement to Complainant's use of the Soil and Water Assessment Tool (SWAT) and Agricultural Policy/Environmental Extender (APEX) models predict that approximately 2,410 tons of manure was discharged to the unnamed tributary of Elliot Creek between 2002 and 2006 during 43 precipitation events. The models predict that approximately 16,700 lbs of phosphorous and 117,000 pounds of nitrogen

CERTIFICATE OF SERVICE

I hereby certify that copies of the First Supplemental Prehearing Exchange in the Matter of Lowell Vos d/b/a Lowell Vos Feedlot., Docket No. CWA-07-2007-0078, were sent to the following persons in the manner indicated:

A true and correct copy hand delivered to:

Kathy Robinson (original plus one copy)
Regional Hearings Clerk
EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101

A true and correct copy by EPA pouch mail to:

Honorable William B. Moran
Administrative Law Judge
U.S. EPA Office of Administrative Law Judges
1200 Pennsylvania Ave. NW
Mail Code 1900L
Washington, D.C. 20460

A true and correct copy by U.S. mail to:

Eldon McAfee
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