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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

In the matter of:)	
)	
)	
Poverty Knob Farm, Inc.)	DOCKET NO. CWA-07-2008-0030
)	
)	
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 Order of May 14, 2008, Complainant, United States Environmental Protection Agency (EPA), submits this First Supplemental Prehearing Exchange. Complainant filed its Prehearing Exchange on July 11, 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 at and around Respondent's feedlot during a facility visit on or around July 1, 2008. Photographs taken by Mr. Pollard on July 1, 2008 are attached as Complainant's Exhibit 61.

2. Lannie Miller: In addition to the testimony described in Complainant's Prehearing Exchange, Mr. Miller will testify regarding an aquatic survey he conducted on Silver Creek and its tributary. Mr. Miller has conducted studies of many Iowa streams of similar size as Silver Creek and its tributary. Mr. Miller is expected to compare and contrast his findings in Silver Creek and its tributary with other aquatic studies he and IDNR have performed. Mr. Miller is expected to opine on the impact of discharges from Respondent's feedlot on the water quality and aquatic life in Silver Creek, the unnamed tributary of Silver Creek and the larger receiving streams they flow into. IDNR's 2006 and 2007 Stream Fisheries Inventories are attached as Complainant's Exhibits 56 and 57.

3. Jonathan S. Shefftz. Should Respondent satisfy its burden to present evidence indicating an inability to pay, Mr. Shefftz may be called to rebut this claim or otherwise respond to Respondent's evidence.
4. Sandra Doty. Respondent does not expect to call Ms. Doty as a witness.
5. University of Iowa Hygienic Laboratory Staff. If the parties are unable to stipulate to the admissibility of sampling results, EPA will call the Iowa Hygienic Laboratory staff necessary to establish a proper chain of custody and to testify regarding the analyses performed.
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 "Complainant's Ex. No. XX"

- C55 April 24-25, 2007, IDNR photos of Poverty Knob, Inc., feedlot (Photos 1-18).
- C56 IDNR 2006 Stream Fisheries Inventory.
- C57 IDNR 2007 Stream Fisheries Inventory.
- C58 September 27, 2007, Plan of Action with attachments, including NPDES permit application and conceptual feedlot layout.
- C59 January 8, 2008, IDNR correspondence regarding November, 13, 2007, facility visit.
- C60 June 26, 2008, Don Hamera Trip Report from March 11, 2008, facility visit. Photos and samples referenced in this exhibit are included in Complainant's Exhibit 32.
- C61 Photos taken at and around Respondent's feedlot on July 1, 2008 (Photos 1-3).
- C62 Stream Fishkill Follow-up Assessment: Fish Community Results, Iowa Department of Natural Resources, February 2002.
- C63 Documentation associated with IDNR Fisheries assessment of Silver Creek.
- C64 Poverty Knob Farm, Inc., Monthly Construction Reports (March 6, 2008- present).
- C65 Poverty Knob Farm, Inc., Weekly Cattle Inventories (April 4, 2008- present).
- C66 Poverty Knob Quarterly Report (August 7, 2008).

III. Discussion of Proposed Penalty

EPA will not use mathematical/computer modeling to demonstrate when Respondent's facility discharged to waters of the United States. Instead, Complainant will use observed and/or sampled discharges in conjunction with rainfall data to demonstrate when the facility discharged feedlot-related pollutants to waters of the United States. In addition to days of violation that were observed by EPA or IDNR, EPA also intends to extrapolate from rainfall data the days when precipitation exceeded the amounts that resulted in observed discharges. EPA intends to present evidence that Respondent's feedlot discharged at least 5 times to Silver Creek and its tributary.

EPA's change in methodology does not impact the number of days that Respondent violated its duty to apply for a NPDES permit. Furthermore, the change in methodology does not impact EPA's allegation that Respondent received approximately \$176,000 in economic benefit from avoiding the costs associated with compliance or, in the alternative, \$44,000 in delayed costs.

The violations alleged in the Complaint continue to constitute serious CWA violations warranting the assessment of a penalty in the amount of \$157,000, the statutory maximum.

IV. Reservations

Complainant reserves the right to call all witnesses named by Respondent.

RESPECTFULLY SUBMITTED this 7th day of November, 2008.



J. Daniel Breedlove
Assistant Regional Counsel
Region 7

CERTIFICATE OF SERVICE

I hereby certify that copies of the First Supplemental Prehearing Exchange in the Matter of Poverty Knob, Inc., Docket No. CWA-07-2008-0030, were sent to the following persons in EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101

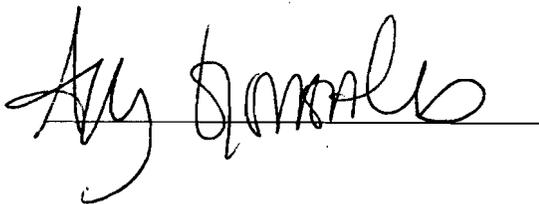
A true and correct copy by EPA pouch mail to:

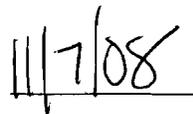
Honorable William B. Moran
Administrative Law Judge
U.S. EPA Office of Administrative Law Judges
1200 Pennsylvania Ave. NW
Mail Code 1900L
Washington, D.C. 20460

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

Eldon McAfee
Beving, Swanson & Forrest, P.C.
321 E. Walnut St., Suite 200
Des Moines, IA 50309

Dated: November 7, 2008

A handwritten signature in cursive script, appearing to read "Amy Daniels", written over a horizontal line.

A handwritten date "11/7/08" written in a simple, blocky style, positioned to the right of the signature.