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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
EPA -- REGION 10

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In the matter of:	)	
	)	
Bruneau Cattle Co.,	)	DOCKET NO. CWA-10-2007-0016
Owyhee County, Idaho,	)	
	)	COMPLAINT
Respondent.	)	

**I. AUTHORITIES**

1. This administrative complaint for civil penalties ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Complainant") by Section 309(g)(2)(B) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10, who in turn has redelegated it to the Director, Office of Compliance and Enforcement.

2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22 ("Part 22 Rules"), Complainant hereby proposes the assessment of a civil penalty against Bruneau Cattle Co. ("Respondent") for the unlawful discharge of pollutants into navigable waters in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

**II. ALLEGATIONS**

3. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the "discharge of a pollutant" by any person, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

1 Section 504(12) of the Clean Water Act, 33 U.S.C. § 1362(12), defines the term “discharge of a  
2 pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3 4. Respondent is a corporation duly organized under the laws of the State of Idaho and  
4 therefore a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

5 5. Respondent operates a beef cattle feeding operation (“the Facility”) that is located on  
6 Jack’s Creek Road in Owyhee County, Idaho, near the town of Bruneau, Idaho.

7 6. Respondent’s Facility contains at least three unvegetated, fenced beef cattle pens and  
8 barns in which it currently stables or confines and feeds or maintains cattle for a total of 45 days or  
9 more in any 12-month period. The three pens are known as the Office Pens, the South Pens and the  
10 North Pens.

11 7. Neither crops, vegetation, forage growth, nor post-harvest residues are sustained over  
12 any portion of the pens in use at the Facility.

13 8. The Facility is an “animal feeding operation” as that phrase is defined in 40 C.F.R.  
14 § 122.23(b)(1).

15 9. For at least the last five years, Respondent has not been authorized to discharge  
16 pollutants under an NPDES permit.

17 10. On February 8, 2006, EPA conducted an NPDES inspection of the Facility.

18 11. At the time of the February 8, 2006 inspection, the Facility confined more than 1,000  
19 cattle. Upon information and belief, Respondent has confined more than 1,000 head of cattle at the  
20 Facility for 45 days or more in each of the last five years.

21 12. The Facility is a “concentrated animal feeding operation” as that phrase is defined in  
22 40 C.F.R. § 122.23(b)(2), and is a “point source” as used in Section 502(14) of the Act, 33 U.S.C.  
23 § 1362(14).

24 13. Spillage or overflow from animal watering systems, as well as any water that comes  
25 into contact with any raw materials, products, or byproducts including manure, litter or feed is  
26 “process wastewater” as the term is defined in 40 C.F.R. § 122.23(b)(7).

1           14.     The South Side Canal originates outside of and passes over, across, or through the  
2 Facility.

3           15.     The South Side Canal flows into the C.J. Strike Reservoir, which flows into the Snake  
4 River. The Snake River is an interstate water.

5           16.     The South Side Canal is "navigable waters" as that term is defined in Section 502(7)  
6 of the Act, 33 U.S.C. § 1362(7), and "waters of the United States" within the meaning of 33 U.S.C.  
7 § 1362(7) and 40 C.F.R. § 122.2. In the alternative, South Side Canal conveys pollutants from  
8 Respondent's Facility to the C.J. Strike Reservoir, which is a water of the United States.

9           17.     The Facility's North Pens discharge process wastewater into the South Side Canal.  
10 Pollutants from the North Pens enter the South Side Canal with each process wastewater discharge to  
11 the Canal. Upon information and belief, the North Pens have discharged process wastewater to the  
12 South Side Canal at least 13 times in the last five years. Upon information and belief, pollutants  
13 entering the South Side Canal from the North Pens flow into C.J. Strike Reservoir and waters  
14 downstream of the Reservoir.

15           18.     The Facility's South Pens discharge process wastewater to a field and a pond to the  
16 north of the South Pens. Overflow from this field and pond enters a tributary to the C.J. Strike  
17 Reservoir. At times more fully known to Respondent, process wastewater from the South Pens  
18 enters the C.J. Strike Reservoir with each discharge from the field or pond.

19           19.     The Facility's Office Pens discharge process wastewater into the South Side Canal.  
20 Pollutants from the Office Pens enter the South Side Canal with each process wastewater discharge  
21 to the Canal. Upon information and belief, the Office Pens have discharged process wastewater to  
22 the South Side Canal on a daily basis for the last five years. Upon information and belief, pollutants  
23 entering the South Side Canal from the Office Pens flow into C.J. Strike Reservoir and waters  
24 downstream of the Reservoir.

25           20.     Upon information and belief, horses in the Facility's Office Pens at the Facility have  
26 come into direct contact with South Side Canal each day they have been present at the facility. Each  
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1 day in which horses have come into contact with South Side Canal has resulted in discharges of  
2 process wastewater to waters of the United States.

3 21. Process wastewater discharged from the Facility is and contains "pollutant[s]" within  
4 the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

5 22. The process wastewater discharges described in Paragraph 17 - 20, above constituted  
6 "discharge[s] of pollutants" within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12),  
7 from a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

8 23. The discharges of pollutants described in Paragraph 17 - 20, above were unauthorized  
9 discharges of pollutants to waters of the United States and constitute no fewer than one thousand  
10 eight hundred thirty eight (1,838) days of violation (at least 13 days for the North Pens, 1,825 days  
11 for the Office Pens) of Section 301 of the Act, 33 U.S.C. § 1311(a). Consequently, pursuant to  
12 Section 309(g)(2)(B) of the Act, and 40 C.F.R. Part 19, Respondent is liable for the administrative  
13 assessment of civil penalties in an amount not to exceed \$11,000 per violation for each day during  
14 which the violation continues, up to a maximum penalty allowed under 33 U.S.C. § 1319(g).

### 15 **III. PROPOSED PENALTY**

16 24. Based on the foregoing allegations of violation, Complainant hereby proposes that the  
17 Presiding Officer assess an administrative penalty against Respondent, for the violations cited above,  
18 in the amount not to exceed the statutory maximum penalty allowed under 33 U.S.C.  
19 § 1319(g)(2)(B) as amended by the Civil Monetary Penalty Inflation Act, and as reflected in 40  
20 C.F.R. § 19.4.

21 25. The penalty will take into consideration the nature, circumstances, extent, and gravity  
22 of the violation, and, with respect to the Respondent, ability to pay, prior history of violations, degree  
23 of culpability, economic benefit and savings resulting from the violation, and other appropriate  
24 factors to the extent the information is available for such determinations.

25 26. The nature, circumstances, extent, and gravity of the violations described above are  
26 significant. Respondent has over 4,000 head of cattle in its Facility, yet has no containment to  
27 prevent runoff of process wastewater and has no NPDES permit. The violations resulted in the  
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1 discharge of manure-laden animal waste to waters of the United States. Such discharges contain  
2 significant levels of both fecal coliform and *Escherichia coli* (*E. coli*) bacteria. The presence of  
3 these bacteria indicates the possible presence of a number of pathogens (such as *E. coli* 0157:H7 and  
4 *Salmonella*) as well as parasites (such as *Cryptosporidium*). Illnesses caused by these  
5 microorganisms can result in gastroenteritis, fever, kidney failure, and even death. Animal wastes  
6 are also typically high in nutrients which can cause decreased oxygen levels in receiving waters.  
7 These decreased oxygen levels can adversely impact many species of fish indigenous to the Pacific  
8 Northwest (including salmon species listed as endangered or threatened under the Endangered  
9 Species Act) during their developmental stages as well as at maturity. The C.J. Strike Reservoir,  
10 which is an immediate downstream water body from Respondent's Facility, is listed by the State of  
11 Idaho as impaired for excessive nutrients.

12 27. By avoiding or delaying the costs associated with implementing waste management  
13 controls that would have ensured compliance with the Clean Water Act, Respondent has realized  
14 economic benefit as a result of the violations alleged above.

15 28. Based on the information available to EPA regarding Respondent's financial  
16 condition, Respondent appears able to pay a civil penalty in the range noted above. Should  
17 Respondent submit information substantiating an inability to pay this amount, the proposed penalty  
18 may be reduced to reflect this inability.

#### 19 **IV. OPPORTUNITY TO REQUEST A HEARING**

20 29. Respondent has the right to file an Answer requesting a hearing on any material fact  
21 contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon request,  
22 the Presiding Officer may hold a hearing for the assessment of these civil penalties, conducted in  
23 accordance with the provisions of the Part 22 Rules and the Administrative Procedures Act, 5 U.S.C.  
24 § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

25 30. Respondent's Answer, including any request for hearing, must be in writing and must  
26 be filed with:

1 Regional Hearing Clerk  
2 U.S. Environmental Protection Agency, Region 10  
3 1200 Sixth Avenue, Mail Stop ORC-158  
4 Seattle, Washington 98101.

5 **V. FAILURE TO FILE AN ANSWER**

6 31. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondent  
7 must file a written Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days  
8 after service of this Complaint.

9 32. In accordance with 40 C.F.R. § 22.15, Respondent's Answer must clearly and directly  
10 admit, deny, or explain each of the factual allegations contained in this Complaint with regard to  
11 which Respondent has any knowledge. Respondent's Answer must also state: (1) the circumstances  
12 or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent  
13 intends to place at issue; and (3) whether a hearing is requested. Failure to admit, deny, or explain  
14 any material factual allegation contained herein constitutes an admission of the allegation.

15 **VI. INFORMAL SETTLEMENT CONFERENCE**

16 33. Whether or not Respondent requests a hearing, Respondent may request an informal  
17 settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of  
18 settling this matter. To request such a settlement conference, Respondent should contact:

19 Mark A. Ryan  
20 Assistant Regional Counsel  
21 U.S. Environmental Protection Agency, Region 10  
22 1435 N. Orchard St.  
23 Boise, Idaho 83706  
24 (208) 378-5768.

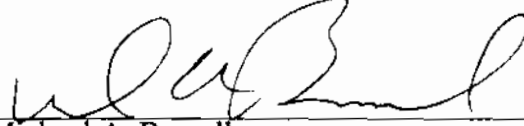
25 34. Note that a request for an informal settlement conference does not extend the thirty  
26 (30) day period for filing a written Answer to this Complaint, nor does it waive Respondent's right to  
27 request a hearing.

28 **VII. RESERVATIONS**

35. Neither assessment nor payment of an administrative civil penalty pursuant to this  
Complaint shall affect Respondent's continuing obligations to comply with: (1) the Clean Water Act

1 and all other environmental statutes; (2) the terms and conditions of all applicable Clean Water Act  
2 permits; and (3) any Compliance Order issued to Respondent under Section 309(a) of the Act, 33  
3 U.S.C. § 1319(a), concerning the violations alleged herein.

4  
5 Dated this 7<sup>th</sup> day of December, 2006

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8 Michael A. Bussell  
9 Director  
10 Office of Compliance & Enforcement  
11 U.S. EPA Region 10  
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1 **CERTIFICATE OF SERVICE**

2 I certify that the foregoing "Complaint" was sent to the following persons, in the manner  
3 specified, on the date below:

4 Original and one copy, hand-delivered:

5 Carol Kennedy, Regional Hearing Clerk  
6 U.S. Environmental Protection Agency, Region 10  
7 1200 Sixth Avenue, Mail Stop ORC-158  
8 Seattle, Washington 98101

9 Copy, together with a cover letters and copy of the Part 22 Rules, by certified mail, return receipt  
10 requested:

11 Mr. Eric Davis  
12 Bruneau Cattle Co.  
13 28723 Jacks Creek Road  
14 Bruneau, Idaho 83604-9702.

15 Dated: 12/7/2006

Sharon Eng

16 U.S. EPA Region 10