

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

<p>TONY L. BROWN and JOSHUA A. BROWN d/b/a RIVERVIEW CATTLE Armstrong, IA</p> <p>Respondents</p>	<p>ANSWER AND REQUEST FOR HEARING</p> <p>Docket No. CWA-07-2016-0053</p>
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COMES NOW the Respondents, Tony L. Brown and Joshua A. Brown, d/b/a Riverview Cattle, by and through their attorney, Eldon L. McAfee, and for their Answer to the EPA's Complaint, Notice of Proposed Penalty and Notice of Opportunity for Hearing, states:

1. Respondents admit paragraph 1.
2. Respondents deny paragraph 2.
3. Respondents admit paragraph 3.
4. Respondents admit paragraph 4.
5. Respondents admit paragraph 5.
6. Respondents admit paragraph 6.
7. Respondents admit paragraph 7.
8. Respondents admit paragraph 8.
9. Respondents admit paragraph 9.
10. Respondents admit paragraph 10.

11. Respondents admit paragraph 11.
12. Respondents admit paragraph 12.
13. Respondents admit paragraph 13.
14. Respondents admit paragraph 14.
15. Respondents admit paragraph 15.
16. Respondents admit paragraph 16.
17. Respondents admit paragraph 17.
18. Respondents admit paragraph 18.
19. Respondents admit paragraph 19.
20. Respondents admit paragraph 20.
21. Respondents admit paragraph 21.
22. Respondents admit paragraph 22.

23. Respondents deny paragraph 23 to the extent it alleges that pollutants were discharged to the East Fork of the Des Moines River. All remaining allegations in paragraph 23 are admitted.

24. Respondents admit paragraph 24.
25. Respondents admit paragraph 25.
26. Respondents admit paragraph 26.
27. Respondents deny paragraph 27.

28. Respondents deny paragraph 28 to the extent it alleges that pollutants were discharged to the East Fork of the Des Moines River. All remaining allegations in paragraph 28 are admitted.

29. Respondents deny paragraph 29 for lack of information sufficient to form a belief.

30. Respondents deny paragraph 30.

31. Respondents deny paragraph 31.

32. Respondents admit paragraph 32 as to the East Fork of the Des Moines River being a water of the United States as defined by 40 C.F.R. Part 122.2. All remaining allegations in paragraph 32 are denied.

33. Respondents deny paragraph 33 to the extent it alleges that pollutants were discharged to the East Fork of the Des Moines River. All remaining allegations in paragraph 33 are admitted.

34. Respondents deny paragraph 34.

35. Respondents incorporate their answers to paragraphs 1 through 34.

36. Respondents deny paragraph 36.

37. Respondents deny paragraph 37 to the extent it alleges that pollutants were discharged in violation of the Clean Water Act. All remaining allegations in paragraph 37 are admitted.

38. Respondents deny paragraph 38.

39. Respondents admit paragraph 39.

40. Respondents deny paragraph 40.

41. No allegations are made in paragraph 41 and therefore no response is necessary.

42. Respondents deny paragraph 42.

43. Respondents deny paragraph 43.

44. No allegations are made in paragraph 44 and therefore no response is necessary.

45. No allegations are made in paragraph 45 and therefore no response is necessary.

46. No allegations are made in paragraph 46 and therefore no response is necessary.

47. No allegations are made in paragraph 47 and therefore no response is necessary.

48. No allegations are made in paragraph 48 and therefore no response is necessary.

49. No allegations are made in paragraph 49 and therefore no response is necessary.

50. No allegations are made in paragraph 50 and therefore no response is necessary.

51. No allegations are made in paragraph 51 and therefore no response is necessary.

52. No allegations are made in paragraph 52 and therefore no response is necessary.

53. No allegations are made in paragraph 53 and therefore no response is necessary.

### **DEFENSES TO PROPOSED CIVIL PENALTY**

Respondent submits that the EPA's proposed penalty is inappropriate considering the statutory factors and specific facts of this case. In particular, EPA's visual observations and sample results from the samples taken on June 14, 2014, referenced in ¶'s 29 and 30 of the Complaint do not show that a discharge of pollutants from the Respondent's animal feeding operation to a water of the U.S. occurred in that no samples of a discharge to a water of the U.S. were taken, nor were there any visual observations of discharges of pollutants to a water of the U.S., even though EPA had the opportunity to take such samples and make such visual observations. In addition, even if EPA's alleged visual observations and sampling results could be proven to show a discharge to a water of the U.S. on June 14, 2014, contrary to the allegations in ¶'s 36, 37 and 38 of the Complaint, EPA has at the most proof of one discharge event. Due to the real world variability in precipitation and runoff that may or may not occur from any particular event, EPA cannot extrapolate one event as proof of discharges on other days.

### **REQUEST FOR A HEARING**

Pursuant to 40 C.F.R. Part 22, Respondent requests a hearing on the issues raised in the Complaint and in this Answer.

Dated this <sup>9</sup>th day of June, 2016.

BRICK GENTRY, P.C.

*Eldon McAfee*  
Eldon L. McAfee AT0004987

6701 Westown Parkway, Suite 100  
West Des Moines, IA 50266  
Telephone: (515) 271-5916  
Facsimile: (515) 274-1488  
[eldon.mcafee@brickgentrylaw.com](mailto:eldon.mcafee@brickgentrylaw.com)

**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 8<sup>th</sup> day of June, 2016

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

Signature: *Eldon McAfee*  
*Nancy Frankler*

Original and one copy to: **Kathy Robinson**  
**Regional Hearing Clerk**  
**U.S. Environmental Protection Agency, Region 7**  
**11201 Renner Boulevard**  
**Lenexa, Kansas 66219**

Headquarters Hearing Clerk  
~~QAL-filing@epa.gov~~

Copy to:

Howard Bunch, Attorney, Office of Regional Counsel  
U.S. EPA, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
[Bunch.Howard@epa.gov](mailto:Bunch.Howard@epa.gov)