

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

Tony L. Brown and)	
Joshua A. Brown)	Docket No. CWA-07-2016-0053
d/b/a Riverview Cattle)	
Armstrong, Iowa)	
)	
Respondents)	
)	COMPLAINANT’S PREHEARING
)	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 November 14, 2016, Complainant United States Environmental Protection Agency (EPA) submits this Prehearing Exchange.

The Clean Water Act (CWA) regulates discharges of pollutants into waters of the United States. Section 301 of the Act, 33 U.S.C. § 1311(a) prohibits the discharge of pollutants from a point source into a water of the United States except in compliance with a permit issued under, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. The Complaint in this matter (CX 9¹) alleges that on at least six occasions between May 2011 and July 2014 (the period of violations), Respondents’ animal feeding operation near Armstrong, Iowa (facility) illegally discharged process wastewater to the East Fork of the Des Moines River via an inlet to a drain tile system without a Section 402 permit, and in violation of Section 301 of the CWA. This allegation is supported by the direct observations of EPA’s inspectors during inspections of Respondents’ facility in 2014 and 2016 (CX 1, CX 8), and evidence of the physical characteristics of Respondents’ facility and precipitation events during the period of the alleged violations.

A. WITNESSES.

1. Trevor Urban. Mr. Urban is an Inspector with Region 7’s Environmental Science and Technology Division. He will testify about observations he made during EPA’s June 17, 2014 and March 29, and 30, 2016 compliance evaluation inspections of the Respondents’ facility. He is also expected to testify regarding supporting materials and state reports, gathered and evaluated as part of the inspections and attached to EPA’s reports (CX 1 and CX 8). Mr. Urban’s testimony is expected to include descriptions of his observations of the conditions at the Respondent’s facility at the 2014 and 2016 inspections, statements made by Respondents, and the sample results of process wastewater taken at various locations at Respondents’ facility, including at or near the inlet and outlet of a drain tile system that discharges into the East Fork of the Des Moines River. These sample results documented the elevated presence of pollutants

¹ Per the Presiding Officer’s Order of November 14, 2016, “Complainant’s Exhibit” is abbreviated as “CX ___.”

associated with animal feeding operations, including Respondents' facility. Finally, Mr. Urban will testify as to facts relating to the nature, circumstances, extent, and gravity of the violations alleged in the Complaint, taking into account his personal observations at the facility and his review of records relevant to the facility's operations. Mr. Urban will testify as a fact witness.

2. Richard Roberts. Mr. Roberts is an Inspector with Region 7's Environmental Science and Technology Division. He is expected to testify about observations he made during EPA's June 17, 2014, compliance inspection of Respondents' facility (CX 1). Mr. Robert's testimony is expected to include descriptions of the conditions at the Respondents' facility during the 2014 inspection, statements made by Respondents, and the sample results of process wastewater taken at various locations at Respondents' facility, including at or near the inlet of the drain tile system on Respondents' property that discharges into the East Fork of the Des Moines River. These sample results documented the elevated presence of pollutants associated with animal feeding operations, including Respondents' facility. Finally, Mr. Roberts will testify as to facts relating to the nature, circumstances, extent, and gravity of the violations alleged in the Complaint, taking into account his personal observations at the facility and his review of records relevant to the facility's operations. Mr. Roberts will testify as a fact witness.

3. Lois Benson. Ms. Benson is an inspector with the Iowa Department of Natural Resources (IDNR). Ms. Benson's duties include, among other things, inspection and site assessment of animal feeding operations in northwestern Iowa. Ms. Benson has inspected Respondents' facility and will testify regarding her observations and her review of records relevant to Respondents' operations. Ms. Benson also acted as an IDNR point of contact for the Respondent for NPDES permitting and compliance issues. Ms. Benson will testify regarding communications between Respondents and IDNR and Respondents' history of noncompliance with the CWA. She will testify about, among other things, her observations during visits and EPA's 2014 and 2016 inspections and other state inspection of the Respondents' facility, and statements and submittals made by Respondents.

4. Seth Draper. Mr. Draper is an Environmental Scientist in the Water Enforcement Branch of Region 7's Water, Wetlands and Pesticides Division. Mr. Draper has worked in Region 7's Water Enforcement program for over 5 years, and previously worked in similar enforcement for Region 8 (Denver) for 2 years. While Mr. Draper worked in Region 8 he served as program lead for that Region's concentrated animal feeding operation (CAFO) enforcement program.

Mr. Draper's testimony is expected to include descriptions of the conditions at the Respondents' facility during the March 29, and 30, 2016 inspection (CX 8), statements made by Respondents, and descriptions of the sample results of process wastewater taken from various locations at Respondents' facility, including at or near the inlet and outlet of the drain tile system that discharges into the East Fork of the Des Moines River. These sample results documented the elevated presence of pollutants associated with animal feeding operations.

Mr. Draper is expected to testify on his assessment of Respondents' noncompliance with the Clean Water Act (and its promulgated regulations) based on his review of the evidence concerning Respondents' facility and operation of their animal feeding operation. Mr. Draper will testify regarding his determination that on numerous occasions, pollutants were discharged

from Respondents' facility without authorization under the CWA, into the East Fork of the Des Moines River. He will also testify about his observations and review of documents concerning the East Fork of the Des Moines River watershed. Mr. Draper will testify as a fact witness regarding his observations during the 2016 inspection and review of other documentary evidence. Based on his observations, research and personal knowledge, Mr. Draper will testify regarding the flow path of runoff and pollutants from the Respondents' facility to waters of the United States. Mr. Draper will testify as to his review of the evidence in this matter and the factual basis for EPA's determination that Respondents violated the CWA. Mr. Draper will testify as to facts relating to the nature, circumstances, extent, and gravity of the violations alleged in the Complaint, taking into account his personal observations at the facility and his review of records relevant to the facility's operations.

5. Stephen Wang, PhD. Dr. Wang is a Hydrologist and Life Scientist within Region 7's Water Quality Management Branch for the Water, Wetlands and Pesticide Division. In this position, Dr. Wang functions as the Surface Water Modeling Expert for Region 7 and provides technical expertise in reviewing state-submitted total maximum daily loads (TMDL), conducts stream, watershed and lake modeling for EPA generated TMDLs, and provides technical advice on enforcement cases. Dr. Wang's responsibilities also include national participation on planning and advisory groups such as EPA's National Modeling Workgroup and Steering Committee, and EPA's Council for Regulatory Environmental Modeling.

Dr. Wang is expected to testify to his evaluation of the evidence of how precipitation and runoff of storm water and process wastewater from Respondents' facility discharged into the facility's inlet to the drain tile system, and thereafter, to the East Fork of the Des Moines River. Dr. Wang will testify regarding computer modeling that demonstrates that Respondent's feedlot discharged pollutants to waters of the United States. Based on his evaluation and analysis of the evidence and his modeling effort, Dr. Wang is expected to testify that such discharges occurred on (50 days between May 2011 and July 2014 (period of violations). Dr. Wang will testify as a fact and expert witness. His CV is included as Exhibit CX 19. His expert report is included as Exhibit CX 20. Dr. Wang's report is based on information currently available to EPA, and EPA reserves the right to amend or supplement Dr. Wang's report if additional information becomes available, including information submitted in Respondents' prehearing exchange.

6. Jonathan S. Shefftz. Complainant intends to call Mr. Shefftz as an expert witness regarding the economic benefit enjoyed by Respondent as a result of non-compliance. Mr. Shefftz is a financial analyst with JShefftz Consulting in Amherst, Massachusetts, and his services are provided via EPA's contract with Industrial Economics, Incorporated. Mr. Shefftz's CV is included as Exhibit CX 17. Contract authorization for Mr. Shefftz to work on this case is pending. EPA intends include Mr. Shefftz' expert report when completed in EPA's rebuttal prehearing exchange as Exhibit CX 18.

7. EPA reserves the right to call all witnesses named by Respondents. EPA also reserves the right to supplement its witnesses based on information provided by Respondent in its Prehearing Exchange and facts and issues that may come to light subsequent to Prehearing submissions, including establishing the authentication and foundation of offered exhibits.

B. EXHIBITS.

For purposes of the list of documents below, “Complainant’s Exhibit” is abbreviated as “CX ____.” Attachments to an exhibit, or a similar type of document within a class of documents submitted as single exhibit are identified by sub exhibit number (example CX 1.1)

- CX 1 EPA’s “Report of Concentrated Animal Feeding Operation Compliance Sampling Inspection”(June 17, 2014 Inspection of Respondents’ facility) and attachments
 - CX 1.1 Multimedia Screening Checklist (2 pages)
 - CX 1.2 Confidentiality Notice (1 page)
 - CX 1.3 Receipt for Documents and Samples (1 page)
 - CX 1.4 Notice of Potential Violation (1 page)
 - CX 1.5 Digital Photograph Image Chain of Custody/Photo Log and Photos #1 - #37 (43 pages)
 - CX 1.6 Facility Satellite Photos/Maps (4 pages)
 - CX 1.7 Daily Feed Sheets/Inventory Records for Bacon Maker and Riverview Cattle (3 pages)
 - CX 1.8 IDNR Complaint Inspection Report Dated 7/22/11 and Notice of Violation to Bacon Maker for Manure Stockpiling Too Close to a Water Source-Dated 8/3/11 (2 pages)
 - CX 1.9 IDNR Records/File for Riverview Cattle/Tony Brown Facility- ID #68073 (3 pages)
 - CX 1.10 Emmet County Tile Drain Maps and Facility Tile Drain Maps Via E-Mail (4 pages)
 - CX 1.11 Current Manure Management Plan (MMP) for Bacon Maker - Dated 5/29/14 (100 pages)
 - CX 1.12 Bacon Maker MMP Short Form for Annual Updates Dated 5/30/14 & Annual Compliance Fee Form Received by IDNR 6/2/14 (2 pages)
 - CX 1.13 Site Safety Check Off List (2 pages)
 - CX 1.14 Sampling Data Transmittal Package, Chain of Custody Forms & Field Sheets (9 pages)
 - CX 1.15 EPA Stream Characteristics and Water Nexus Form (2 pages)
 - CX 1.16 Entry/Exit-Briefing Checklist (1 page)
 - CX 1.17 General CAFO Inspection Form (7 pages)
- CX 2 June 23, 2014 email to EPA inspector (Mr. Trevor Urban) with attachments (10 pictures)
- CX 3 January 14, 2015 Request for Information (Transmittal of 2014 Inspection report)
- CX 4 Respondents’ February 11, 2015 response to EPA’s January 14, 2015 Request for Information
- CX 5 March 24, 2015 Email from Respondent Tony Brown to Lois Benson (IDNR) with attachments

- CX 6 May 15, 2015, “Administrative Order for Compliance” (Docket No. CWA-07-2015-0059)
- CX 7 Respondents’ response to May 15, 2015 Order for Compliance (Docket No. CWA-07-2015-0059)
- CX 8 EPA’s “Report of Concentrated Animal Feeding Operation Compliance Sampling Inspection” (March 29 and 30, 2016 Inspection of Respondents’ facility) and attachments
- CX 8.1 Multimedia Screening Checklist (2 pages)
 - CX 8.2 Confidentiality Notice Dated 3/29/2016 (1 page)
 - CX 8.3 Receipt for Documents and Samples Dated 3/29/2016 (1 page)
 - CX 8.4 Confidentiality Notice Dated 3/30/2016 (1 page)
 - CX 8.5 Receipt for Documents and Samples Dated 3/30/2016 (1 page)
 - CX 8.6 Digital Photograph Image Chain of Custody/Photo Log and Photos # 1 - #55 (64 pages)
 - CX 8.7 Facility Satellite Photos/Maps (4 pages)
 - CX 8.8 Daily Feed Sheets/Inventory Records for Riverview Cattle Co. & Bacon Maker (3 pages)
 - CX 8.9 Riverview Cattle Company Open Manure Pit Analyses for 2015 (2 pages)
 - CX 8.10 Drainage Tile Maps for 2001 - 2014 Tile Drainage System (2 pages)
 - CX 8.11 IDNR Separation Distance for Land Application Guide (2 pages)
 - CX 8.12 Site Safety Check Off List (2 pages)
 - CX 8.13 Sampling Data Transmittal Package, Chain of Custody Forms & Field Sheets (46 pages)
 - CX 8.14 EPA Stream Characteristics and Water Nexus Form (2 pages)
 - CX 8.15 Entry/Exit-Briefing Checklist (1 page)
- CX 9 May 10, 2016 “Complaint, Notice of Proposed Penalty and Notice Opportunity for Hearing” Tony and Joshua Brown (d/b/a Riverview Cattle)(Docket No. CWA-07-2016-0053)
- CX 10 Proof of Service of Complaint (Docket No. CWA-07-2016-0053)
- CX 11 Proof of public notice of Complaint, as required by Section 309(g)(4) of the CWA, 33 U.S.C. 1319(g)(4)
- CX 12 Aerial Photographs of Respondents’ facility (Source, Date, Type)
- CX 12.1 FSA NAIP, September-11-2010, CIR
 - CX 12.2 Pictometry Online, April-17-2011, Obliq5654W
 - CX 12.3 Pictometry Online, April-17-2011, Obliq5671W
 - CX 12.4 Pictometry Online, April-17-2011, Obliq5735S4
 - CX 12.5 Pictometry Online, April-17-2011, Obliq5753S
 - CX 12.6 Pictometry Online, April-17-2011, Obliq7452E
 - CX 12.7 Pictometry Online, April-17-2011, Obliq7471W

CX 12.8 Pictometry Online, April-17-2011, Obliq7635S
CX 12.9 Pictometry Online, April-17-2011, Obliq7653S
CX 12.10 Pictometry Online, April-17-2011, Obliq56340E
CX 12.11 Pictometry Online, April-17-2011, Obliq56360W
CX 12.12 Pictometry Online, April-17-2011, Obliq56540W
CX 12.13 Pictometry Online, April-17-2011, Ortho7450
CX 12.14 Pictometry Online, April-17-2011, Ortho56380
CX 12.15 FSA NAIP, Aug-3-2011, CIR
CX 12.16 FSA NAIP, July-10-2013, CIR
CX 12.17 DigitalGlobe, June-13-2014
CX 12.18 FSA-NAIP, Sept-7-2014, CIR
CX 12.19 DigitalGlobe, February-13-2015
CX 12.20 DigitalGlobe, February-11-2015
CX 12.21 DigitalGlobe, February-04-2015
CX 12.22 Pictometry Online, March-18-2015, Obliq7028N
CX 12.23 Pictometry Online, March-18-2015, Obliq5495W
CX 12.24 Pictometry Online, March-18-2015, Obliq5452W
CX 12.25 Pictometry, Online-March-18-2015, Obliq5438W
CX 12.26 DigitalGlobe, June-01-2015
CX 12.27 FSA NAIP, August-8-2015, CIR
CX 12.28 DigitalGlobe, November-22-2015
CX 12.29 Pictometry Online, March-22-2016, Obliq5625E
CX 12.30 Pictometry Online, March-22-2016, Obliq5643E
CX 12.31 Pictometry Online, March-22-2016, Obliq5751W
CX 12.32 Pictometry Online, March-22-2016, Obliq5839S
CX 12.33 Pictometry Online, March-22-2016, Obliq5857S
CX 12.34 Pictometry Online, March-22-2016, Obliq7525E
CX 12.35 Pictometry Online, March-22-2016, Obliq7533W
CX 12.36 Pictometry Online, March-22-2016, Obliq7543E
CX 12.37 Pictometry, Online, March-22-2016, Obliq7551W
CX 12.38 Pictometry Online, March-22-2016, Obliq7639S
CX 12.39 Pictometry Online, March-22-2016, Obliq57510W
CX 12.40 Pictometry Online, March-22-2016, Obliq57690W
CX 12.41 Pictometry Online, March-22-2016, Ortho5744
CX 12.42 Pictometry Online, March-22-2016, Ortho7544
CX 12.43 DigitalGlobe, May-08-2016
CX 12.44 DigitalGlobe, June-07-2016

CX 13 United States Geological Service (USGS) topographical map of Respondents' facility

CX 14 LIDAR (Light Detection And Ranging) radar image of ground surface elevation of Respondents' facility. University of Northern Iowa. 2016. Web-based GeoTree LiDAR Download Tool. This information is available online at the following url:

<http://www.geotree.uni.edu/en/extensions/iowa-lidar-mapping-project/>.

CX 15 National Oceanic and Atmospheric Administration, National Climatic Data Center (NCDC) Global Historical Climatology Network rain gauge data for Swea City, IA (ID: 138026) (This rain gauge was used to characterize the daily rainfall conditions for the facility). This information is available online at the following url:

<https://www.ncdc.noaa.gov/cdo-web/search?datasetid=GHCND>

CX 16 National Oceanic and Atmospheric Administration's National Weather Service Advanced Hydrologic Prediction Service 24-hour composite radar imagery documenting rain events at Respondents' facility. This information is available online at the following url:

<http://water.weather.gov/precip/>

2011

CX 16.1 May 20, 2011 radar image
CX 16.2 May 21, 2011 radar image
CX 16.3 May 22, 2011 radar image
CX 16.4 May 23, 2011 radar image
CX 16.5 May 26, 2011 radar image
CX 16.6 June 10, 2011 radar image
CX 16.7 June 15, 2011 radar image
CX 16.8 June 16, 2011 radar image
CX 16.9 June 19, 2011 radar image
CX 16.10 June 20, 2011 radar image
CX 16.11 June 21, 2011 radar image
CX 16.12 June 22, 2011 radar image
CX 16.13 June 23, 2011 radar image

2012

CX 16.14 April 20, 2012 radar image

2013

CX 16.15 April 10, 2013 radar image
CX 16.16 April 11, 2013 radar image
CX 16.17 April 14, 2013 radar image
CX 16.18 April 18, 2013 radar image
CX 16.19 April 19, 2013 radar image
CX 16.20 April 21, 2013 radar image
CX 16.21 April 22, 2013 radar image
CX 16.22 April 23, 2013 radar image
CX 16.23 April 29, 2013 radar image
CX 16.24 May 2, 2013 radar image
CX 16.25 May 17, 2013 radar image

CX 16.26 May 18, 2013 radar image
CX 16.27 May 19, 2013 radar image
CX 16.28 May 20, 2013 radar image
CX 16.29 May 21, 2013 radar image
CX 16.30 June 22, 2013 radar image
CX 16.31 June 23, 2013 radar image
CX 16.32 June 24, 2013 radar image
CX 16.33 June 25, 2013 radar image

2014

CX 16.34 April 28, 2014 radar image
CX 16.35 April 29, 2014 radar image
CX 16.36 April 30, 2014 radar image
CX 16.37 June 02, 2014 radar image
CX 16.38 June 15, 2014 radar image
CX 16.39 June 17, 2014 radar image
CX 16.40 June 18, 2014 radar image
CX 16.41 June 20, 2014 radar image
CX 16.42 July 25, 2014 radar image
CX 16.43 July 26, 2014 radar image
CX 16.44 July 27, 2014 radar image

CX 17 CV for Jonathan Schefftz

CX 18 Economic Benefit Expert Report by Jonathan S. Shefftz (EPA has not yet received the economic benefit expert report prepared by Jonathan Schefftz. The EPA will submit Mr. Shefftz's report in Complainant's rebuttal prehearing exchange)

CX 19 CV for Dr. Stephen Wang

CX 20 Expert Report of Dr. Stephen Wang

CX 21 *Beef Feedlot Systems Manual*, Iowa Beef Center, Iowa State University (2015) This information is available online at the following url:

<https://store.extension.iastate.edu/Product/Beef-Feedlot-Systems-Manual-PDF>

CX 22 Risk Assessment Evaluation for Concentrated Animal Feeding Operations, U.S. Environmental Protection Agency, Office of Research and Development (May 2004). This information is available online at the following url:

<https://nepis.epa.gov/Exe/ZyNET.exe/901V0100.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2000+Thru+2005&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIn>

[dex%20Data%5C00thru05%5CTxt%5C00000011%5C901V0100.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=p%7Cf&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL](https://nepis.epa.gov/Exe/ZyNET.exe/P100H2NI.txt?ZyActionD=ZyDocument&Client=EPA&Index=2011%20Thru%202015&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5CZYFILES%5CINDEX%20DATA%5C11THRU15%5CTXT%5C00000008%5CP100H2NI.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=p%7Cf&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL)

CX 23 Environmental Impacts of Animal Feeding Operations, US EPA (December 31, 1998)

CX 24 Literature review of Contaminants in Livestock and Poultry Manure and Implications for Water Quality, U.S. Environmental Protection Agency, Office of Water (June 2013) This information is available online at the following url:

<https://nepis.epa.gov/Exe/ZyNET.exe/P100H2NI.txt?ZyActionD=ZyDocument&Client=EPA&Index=2011%20Thru%202015&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5CZYFILES%5CINDEX%20DATA%5C11THRU15%5CTXT%5C00000008%5CP100H2NI.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=p%7Cf&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1>

CX 25 Disease Information for specific pathogens

- CX 25.1 Salmonella (non typhoidal), World Health Organization (2016)
- CX 25.2 Cryptosporidiosis Fact Sheet, National Foundation of Infectious Diseases
- CX 25.3 Giardiasis, Clinical Microbiology Review, Wolfe (1992)
- CX 25.4 A brief overview of Escherichia Coli, National Institute of Health (2010)

CX 26 Water Quality Improvement Plan for East Fork Des Moines River, Kossuth County, Iowa (Total Maximum Daily Load for Pathogen Indicators(2008))

CX 27 NRCS National Engineering Handbook, Section 16, Drainage of Agricultural Land. This information is available online at the following url:

<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=18365.wba>

C. Complainant's Estimated Time for Hearing

Complainant estimates that it will be able to present its case within four (4) days. The length of time required for rebuttal testimony and cross examination of Respondent's witnesses will depend on the numbers and substance of documents and witnesses disclosed in Respondents' Prehearing Exchange.

2. Specific Responses made pursuant to the Presiding Officer's November 14, 2016 Order

A. Documentation of Service of the Complaint

Documentation of service of the Complaint is provided in Exhibit CX10. Additionally, proof of service is established by Respondents' Answer.

B. Factual and/or legal bases for allegations denied or otherwise not admitted

1. Items admitted in Respondents' Answer: In summary, Respondents have admitted the allegations in the following Paragraphs of the Complaint:

- Paragraphs 1, 3-22 (Respondents admit the stated statutory and regulatory authority for regulation of animal and concentrated feeding operations under the CWA. Respondents also admit "Respondents own or operate an animal feeding operation ("Riverview Facility") that is located in the Southeast ¼ of Section 23 of Township 99 North, Range 31 West, in Emmet County, Iowa and has a street address of 1893 570th Avenue, Armstrong, Iowa 50514. The Riverview Facility consists of, among other things, six cattle confinement open lots, a feedstock storage area, a concrete manure pit, and a manure storage area. The open lots have a capacity to confine approximately 900 cattle." See, Paragraph 21 of the Complaint, CX 9)
- Paragraph 23 (partial admission, with denial that "pollutants were discharged to the East Fork of the Des Moines River." Accordingly, Respondents have admitted the number of cattle confined at the time of EPA's 2014 and 2016 inspection (886 and 900, respectively). Respondents have also admitted that during the 2014 Inspection, EPA's "inspector observed and sampled pollutant discharges emanating from the confinement pens and other production areas into the tile-drainage system at the Riverview Facility." Respondents also admit the storage and stockpiling of "manure and bedding pack" at the facility.)
- Paragraphs 24-26 (admission that Respondents' facility is an animal feeding operation as defined by 40 C.F.R. § 122.23(b)(1))
- 28 (partial admission, with denial that "pollutants were discharged to the East Fork of the Des Moines River." Accordingly, Complainant believes that Respondents have admitted that "EPA observed and documented an open inlet into the tile drainage system at the Riverview Facility that received surface runoff... from the Riverview Facility..., and from an estimated 20 acre drainage area. The 2016 inspection confirmed that the tile drainage system discharges into the East Fork of the Des Moines River.")
- Paragraph 32 (admission that the East Fork of the Des Moines River is a water of the United States, all other allegations are denied)
- Paragraph 33 (partial admission, with denial that "pollutants were discharged to the East Fork of the Des Moines River." Accordingly,

Complainant believes that Respondents have admitted that on May 15, 2015, EPA issued Respondents an administrative compliance Order (CX 6), and that thereafter, Respondents blocked the inlet to the drain tile system.)

- Paragraph 35 (incorporates the admissions and denials of preceding paragraphs)
- Paragraph 37 (partial admission, with denial to the “extent it alleges pollutants were discharged in violation of the Clean Water Act.” Accordingly, Respondents have admitted they did not have an NPDES permit)
- Paragraph 39 (administrative penalty authority under the CWA)

2. Items denied in Respondents’ Answer: In summary, Respondents have denied the allegations in allegations in the following Paragraphs of the Complaint:

- Paragraph 2 (denial that the Complaint serves notice that EPA believes Respondents have violated Section 301, of the CWA)
- Paragraph 23 (denial that “pollutants were discharged to the East Fork of the Des Moines River”)
- Paragraph 27 (denial that the culverts and tile-drainage system observed at the time of EPA’s inspections of Respondents’ facility transport discharges from the facility to the East Fork of the Des Moines River and that the culverts and field-tile drainage system are man-made ditches, flushing systems or similar man-made devices)
- Paragraph 28 (denial that “pollutants were discharged to the East Fork of the Des Moines River”)
- Paragraph 29 (denial that during EPA’s 2014 inspection, EPA observed process wastewater and manure from an open pit and other facility production areas flowing into and entering the open surface inlet into the drainage tile system “for lack of information sufficient to form a belief”),
- Paragraph 30 (denial of EPA’s 2014 sampling and results from EPA’s 2014 inspection, and rain events from preceding dates)
- Paragraph 31 (denial that “the Facility was a medium CAFO”)
- Paragraph 32 (all allegations other than the East Fork of the Des Moines River is a water of the United States are denied, equating to a denial that “tributaries” are waters of the United States)
- Paragraph 33 (denial that “pollutants were discharged to the East Fork of the Des Moines River”)
- Paragraph 34 (denial that “Prior to Respondents’ blockage of the open inlet into the tile drainage system, process wastewater containing pollutants from production areas at the Riverview Facility repeatedly discharged into the East Fork of the Des Moines River and/or its tributaries through the drainage tile system as a result of precipitation events.”)

- Paragraph 35 (incorporates the admissions and denials of preceding paragraphs)
- Paragraph 36 (denial that there “have been a minimum of six (6) precipitation events within the last five (5) years that resulted in single and/or multi-day discharges of pollutants from the Riverview Facility”)
- Paragraph 37 (denial that “pollutants were discharged to the East Fork of the Des Moines River,” all other allegations admitted)
- Paragraph 38 (denial of violations of Section 301 of the CWA)
- Paragraph 40 (denial that the proposed penalty is based on the allegations made in the Complaint and the statutory penalty factors of Section 309 of the CWA)
- Paragraph 42 (denial of Complainant’s stated intent to propose a Final Order assessing the proposed penalty, and summary of the basis of the proposed penalty)
- Paragraph 43 (denial that Complainant’s proposed penalty is based on the “best information available” to EPA)

In summary, Respondents’ denials are predominantly associated with Respondents’ assertion that their AFO did not discharge. For example, Respondents’ Answer states: “EPA’s visual observations and sample results from the samples taken on June 14, 2014... do not show a discharge of pollutants from the Respondent’s animal feeding operation to a water of the U.S.” (See, Respondents’ Answer, pg. 5). However, despite the denials, most of the elements of EPA’s claim have been admitted. Respondents have admitted that Facility is an “animal feeding operation” which they own and/or operate ((See, Paragraphs 21-26 of Respondents’ Answer) but have denied the Facility is a “concentrated animal feeding operation” as a consequence of their assertion that the facility does not discharge (Paragraph 31 of Respondents’ Answer). Respondents have admitted they are the owners and operators of the AFO. Respondents have admitted that the East Fork of the Des Moines River is a water of the United States. The matter in dispute appears to be limited to when the facility discharges.

Complainant will present testimony and documentary evidence that the process wastewater from Respondents’ facility that was observed flowing into the inlet to the drain tile during EPA’s June 2014 inspection (CX 1) discharges into the East Fork of the Des Moines River, including but not limited to the following:

- At the time of EPA’s 2014 sampling of the runoff/process wastewater discharging into the inlet, the water was following freely and without impediment, demonstrating the drain tile was operating effectively (CX 1);
- The results of sampling of the process wastewater discharging into the inlet to the drain tile contained elevated levels of pollutants found in process wastewater from animal feeding operations (CX 1.14), and Respondents’ facility was the only source for such pollutants;

- The overland path of runoff and process wastewater draining from Respondents' facility directs process wastewater toward and into the inlet of the drain tile system (CX 1.5, CX 12, CX 13 and CX 14);
- The drain tile is a direct conveyance from the inlet by the Respondents' animal feeding operation to the location of discharge at the banks of the river (CX 1.10);
- In the estimated 2,845 foot distance between the inlet to the drain tile and the outlet on the banks of the river, the surface elevation drops an estimated 38 feet, demonstrating that drainage would occur (CX 13); and
- The outlet of the drain tile discharges directly to the river (CX 8.4);

Further, Respondents assert that "EPA has at most the 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 discharge on other days." (See, Respondents' Answer, pg. 5). In addition to the evidence summarized above, to prove the multiple events of discharge during the period of violation, as alleged in the Complaint, Complainant will present testimony and documentary evidence to prove that surface runoff and process wastewater from Respondents' facility would have discharged into the inlet to the drain tile and into the East Fork of the Des Moines River on numerous occasions, including but not limited to the following:

- Aerial photos documenting the configuration of the Respondents' facility over the period of violation, including the installation of basin sometime between September 2011 and September 2012 (CX 12);
- Rainfall data from the nearby National Climatic Data Center Monitoring Station at Swea City (CX 15);
- 24-hour composite radar imagery documenting the correlation between the measurements of precipitation at the NCDC monitoring location at Swea City and precipitation at Respondents' facility (CX 16); and
- The testimony and evaluation of Dr. Stephen Wang, his analysis of the runoff/process wastewater storage capacity of Respondents' facility and computer runoff modelling demonstrating the multiple days (50) when the facility discharged into the drain tile system and the East Fork of the Des Moines River occurred (CX 20).

3. **Items neither admitted or denied in Respondents' Answer:** Respondents state that no allegations were made in Paragraphs 41, and 44 to 53, and therefore "no response is necessary" to the statements/allegations made in these Paragraphs of the Complaint.

In Paragraph 41 of the Complaint, EPA states that it "will" (prospectively) provide public notice of the Complaint. After service of the Complaint, EPA perfected public notice of the Complaint (CX 11). Similarly, in Paragraph 44, EPA states that it has provided notice of this action to the IDNR, which at hearing EPA intends to establish by the testimony of Mr. Seth Draper. Paragraphs 45 to 53 of the

Complaint set forth the procedural requirements and rights of the Respondents under Section 309 of the CWA, 33 U.S.C. 1319, and 40 C.F.R. Part 22, and Complainant agrees that no response is necessary to the statements in these Paragraphs.

C. Factual information and supporting documentation relevant to the assessment of a penalty

The Complaint alleges “at least six days of discharge” in violation of Section 301 of the CWA (See CX 9, Complaint, Paragraph 36); however, EPA’s current evidence conservatively demonstrates that 50 days of discharge occurred during the period of violation between May 2011 and July 2014 (See CX 20, Expert Report of Dr. Stephen Wang). In support of its proposed penalty of up to \$96,000, Complainant will reference the statutory penalty amounts and factors of Section 309(g)(3) of the CWA. Complainant intends to establish the harm from these illegal discharges by establishing the frequency and volume of the discharges (Including but not limited to, the factual information in Complainant’s exhibits, testimonial evidence and the expert report of Dr. Wang, CX 20). Further, Complainant will establish the presence of harmful pathogens and pollutants found in process wastewater from animal feeding operations by testimony describing established scientific research and literature (CX 21 to CX 25). Complainant will then establish the presence of such harmful pollutants and pathogens in the process wastewater discharging from Respondents’ facility by the results of samples taken during EPA’s 2014 and 2016 inspections (CX 1.14 and CX 8.13). Complainant will also introduce evidence of the impaired water quality of downstream segments of the East Fork of the Des Moines River (CX26), and applicable water quality standards of the State of Iowa (See, <https://programs.iowadnr.gov/adbnet/assessment.aspx?aid=8603>).

D. Applicable Reference materials, Guidance documents and Policies for Animal Feeding Operations:

Reference material and EPA guidance and policies describing the operation and permitting of animal feeding operations, and the harm caused by discharges of process wastewater from animal feeding operations, may be found at the following urls:

1. Beef Feedlot Systems Manual, Iowa Beef Center, Iowa State University (2015)
<https://store.extension.iastate.edu/Product/Beef-Feedlot-Systems-Manual-PDF>
2. EPA NPDES Animal Feeding Operations Policy Documents, Generally:
<https://www.epa.gov/npdes/npdes-afos-policy-documents-0>
3. EPA’s proposed rulemakings/Federal Registers for Concentrated Animal Feeding Operations:

Location of all AFO/CAFO regulation data:

<https://www.epa.gov/npdes/animal-feeding-operations-afos-regulations-guidance-policy-and-funding>

2003 Federal Register: <https://www.gpo.gov/fdsys/pkg/FR-2003-02-12/pdf/03-3074.pdf>

2008 Federal Register: <https://www.gpo.gov/fdsys/pkg/FR-2008-11-20/pdf/E8-26620.pdf>

2012 Federal Register: https://www.epa.gov/sites/production/files/2015-08/documents/cafo_final_rule2008_comp.pdf

4. Risk Assessment Evaluation for Concentrated Animal Feeding Operations, U.S. Environmental Protection Agency, Office of Research and Development (May 2004):

<https://nepis.epa.gov/Exe/ZyNET.exe/901V0100.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2000+Thru+2005&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C00thru05%5CTxt%5C00000011%5C901V0100.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=p%7Cf&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>

5. Literature review of Contaminants in Livestock and Poultry Manure and Implications for Water Quality, U.S. Environmental Protection Agency, Office of Water (June 2013)

<https://nepis.epa.gov/Exe/ZyNET.exe/P100H2NI.txt?ZyActionD=ZyDocument&Client=EPA&Index=2011%20Thru%202015&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5CZYFILES%5CINDEX%20DATA%5C11THRU15%5CTXT%5C00000008%5CP100H2NI.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=p%7Cf&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1>

E. Proof of Public Notice of Complaint

Documentation of the public notice of the Complaint is presented at CX11 and may also be found at this following url:

<https://www.epa.gov/ia/tony-l-brown-and-joshua-brown-dba-riverview-cattle-clean-water-act-public-notice>

3. Reservations

Complainant reserves the right to call all witnesses named by Respondents. Complainant further reserves the right to submit the names of additional witnesses and to submit additional exhibits prior to the hearing of this matter, upon timely notice to the Presiding Officer and to Respondents. Pursuant to the Presiding Officer's Order of November 14, 2016, Complainant will present a detailed explanation of its proposed penalty in the required Rebuttal Prehearing Exchange.

RESPECTFULLY SUBMITTED this 6th day of January, 2017.

/s/

Howard Bunch
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of January, 2017, I filed via the E-filing system the original of this Complainant's Prehearing Exchange to the Office of Administrative Law Judges Hearing Clerk, and sent by commercial service one true and correct copy to Mr. Eldon McAfee, Esq., and the Headquarters Hearing Clerk at the following addresses:

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/s/

Signature of Sender