

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>Docket No. CWA-07-2016-0053</p> <p>RESPONDENTS' RESPONSE TO COMPLAINANT'S MOTION FOR ACCELERATED DECISION AS TO LIABILITY</p>
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COME NOW Respondents, Tony L. Brown and Joshua A. Brown, d/b/a Riverview Cattle, pursuant to 40 C.F.R. §§ 22.16 and 22 and respectfully move that the Presiding Officer enter an Order dismissing Complainant's Motion For Accelerated Decision As To Liability Respondents. As explained in the accompanying Memorandum in support of this Motion, there are genuine issues of material fact supporting Respondents' claims that it did not violate the Clean Water Act because Complainant has failed to produce evidence, despite the clear opportunity to obtain the evidence, sufficient to show that Respondent discharged pollutants from their cattle feedlot to a water of the United States.

Respondent submits that EPA's alleged visual observations and sample results from the samples taken on June 17, 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.

Pursuant to 40 CFR 22.16(d) the Presiding Officer has discretion to permit oral argument on Complainant's Motion For Accelerated Decision As To Liability. The Respondents respectfully request that the Presiding Officer set this matter for telephonic oral argument.

WHEREFORE, because there are genuine issues of material fact as to Respondent's liability, Respondent respectfully moves the Presiding Officer for an Order dismissing Complainant's Motion For Accelerated Decision As To Liability Respondents, and for such further relief that is equitable and just.

RESPECTFULLY SUBMITTED this 30th day of May, 2017.

BRICK GENTRY, P.C.

/s/ Eldon L. McAfee

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ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May, 2017, I filed via the E-filing system the original of this Response to Complainant's Motion for Accelerated Decision as to Liability and sent by email to Mr. Howard Bunch, counsel for Complainant.

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/s/ Eldon L. McAfee

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