

2016 MAY 10 PM 2: 41

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

BEFORE THE ADMINISTRATOR

Tony L. Brown and	)	
Joshua A. Brown	)	Docket No. CWA-07-2016-0053
d/b/a Riverview Cattle	)	
Armstrong, Iowa	)	
Respondents	)	COMPLAINT, NOTICE OF
	)	PROPOSED PENALTY AND
	)	NOTICE OF OPPORTUNITY
	)	FOR HEARING
	)	
Proceedings under Section 309(g) of the	)	
Clean Water Act, 33 U.S.C. § 1319(g)	)	
_____	)	

**COMPLAINT**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Complaint serves as notice that the United States Environmental Protection Agency (“EPA”) has reason to believe that Respondent has violated Section 301, of the CWA, 33 U.S.C. §1311, and regulations promulgated thereunder.

**Parties**

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA Region 7 (“Complainant”).

4. Respondents are Tony L. Brown and Joshua A. Brown (Respondents), doing business as Riverview Cattle, individuals authorized to conduct business in the state of Iowa. Respondents are each a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362

### **Statutory and Regulatory Framework**

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA authorizes states to issue NPDES permits that, among other things, prescribe conditions whereby a discharge may be authorized, and establish design, construction, operation, and maintenance requirements for the permit holder.

7. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a NPDES permit issued pursuant to that Section.

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

9. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362 to include, among other things, biological materials and agricultural waste discharged to water.

10. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362 to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation . . . from which pollutants are or may be discharged.”

11. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Pursuant to 40 C.F.R. § 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

12. “Process wastewater” is defined by 40 C.F.R. § 122.23(b)(7) as water “directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.”

13. “Production Area” is defined by 40 C.F.R. § 122.23 and means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage areas, and the waste containment areas. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

14. “Animal feeding operation” or “AFO” is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

15. “Concentrated animal feeding operation” or “CAFO” is defined by 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large or Medium CAFO in accordance with 40 C.F.R. § 122.23(b).

16. “Large CAFO” is defined, according to 40 C.F.R. § 122.23(b)(4), as an animal feeding operation that stables or confines “300 to 999 cattle other than mature dairy cows or veal calves.”

17. “Medium CAFO” is defined, according to 40 C.F.R. § 122.23(b)(6), as an animal feeding operation that stables or confines “300 to 999 cattle other than mature dairy cows or veal calves” and either of the following conditions are met:

a. Pollutants are discharged into waters of the U.S. through a man-made ditch, flushing system, or other similar man-made device; or

b. Pollutants are discharged directly into waters of the U.S. which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

18. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.

19. The Iowa Department of Natural Resources (IDNR) is the agency within the state of Iowa authorized to administer the federal NPDES Program. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

20. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to commence an action for administrative penalties against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

### **Factual Background**

21. 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.

22. On or around June 17, 2014, EPA personnel conducted a compliance evaluation inspection of the Facility. EPA conducted a follow up inspection of the Riverview Facility on March 29 and 30, 2016.

23. At the time of the EPA 2014 inspection, the Riverview Facility was confining approximately 886 head of beef cattle. The inspector observed and sampled pollutant discharges emanating from the confinement pens and other production areas into the tile-drainage system at the Riverview Facility. During the 2016 inspection, the EPA confirmed that the tile-drainage system conveys pollutant discharges directly to the East Fork of the Des Moines River. The 2016 inspection also confirmed that Respondent continued to confine approximately 900 head of cattle at the Riverview Facility. Discussions between Respondents and the EPA inspector during the 2014 inspection also documented that manure and bedding pack were stockpiled and stored at the Riverview Facility.

24. Neither crops, vegetation, forage growth, nor are post-harvest residues sustained over any portion of the Facility’s confinement areas at times relevant to this Order.

25. The Facility confines and feeds or maintains cattle for a total of forty-five (45) days or more in any twelve (12) month period relevant to this Order.

26. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).

27. The culverts and tile-drainage system observed at the time of EPA’s inspections of Riverview Facility transport discharges from the Riverview Facility to the East Fork of the Des

Moines River. The culverts and field-tile drainage system are man-made ditches, flushing systems or similar man-made devices.

28. Specifically, at the time of the 2014 inspection, EPA observed and documented an open inlet into the tile drainage system at the Riverview Facility that received surface runoff and process wastewater from the Riverview Facility production areas, 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.

29. During EPA's 2014 inspection, EPA observed process wastewater and manure from an open manure pit and other Riverview Facility production areas flowing into and entering the open surface inlet into the drainage tile system.

30. During the 2014 inspection, EPA sampled the process wastewater and manure flowing into a surface inlet of the drainage tile system. The results from this sample documented elevated levels of pollutants in the process wastewater discharging from the Riverview Facility, including Ammonia, Total Kjeldahl Nitrogen, Total suspended solids, Biological Oxygen Demand, Total Phosphorus, Nitrites, Chloride and the presence of animal bacteria in (at levels as high as 4,110,000 E. coli units/100 ml). In the three (3) days preceding and including the date of EPA's inspection, an estimated 5-6 inches of precipitation occurred at the Facility. During this period, process wastewater containing pollutants and manure discharged through the open inlet into the tile drainage system and to the East Fork of the Des Moines River and its tributaries.

31. At times relevant to this Complaint, the number of beef cattle confined at the Riverview Facility is between 300 and 999 head for 45 days or more during a twelve (12) month period, and pollutant discharges flow through man-made ditches, flushing systems or similar man-made devices, therefore the Facility was a medium CAFO as that term is defined in 40 C.F.R. §122.23(b)(6) and as the term CAFO is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

32. East Fork of the Des Moines River and its tributaries are waters of the United States, as defined by 40 C.F.R. Part 122.2.

33. On May 15, 2015, EPA issued Respondents an Administrative Order for Compliance (Docket No. CWA-07-2015-0059) that directed Respondents to take actions to come into compliance with the CWA, including ceasing all unpermitted discharges from the Facility. The surface inlet was blocked by Respondents at some date following EPA's inspection.

34. 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.

### **Findings of Violation**

#### **Unpermitted Discharges of Pollutants to Waters of the United States**

35. The allegations set forth in paragraphs 1 through 34, above, are incorporated herein.

36. Riverview Facility production areas lacked runoff controls necessary to contain all precipitation-related runoff. A man-made ditch, flushing system or similar man-made device facilitated the discharge of pollutants to a water of the United States and, as a result, the Riverview Facility was a CAFO at all times relevant to this Complaint. 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 through a man-made ditch, flushing system or similar man-made device to the East Fork of the Des Moines River and its tributaries, which are waters of the United States.

37. Respondents did not have a NPDES permit authorizing the pollutant discharges.

38. Respondents' repeated unpermitted discharges of pollutants (including manure, litter and/or process wastewater) were violations of Section 301 of the CWA, 33 U.S.C. § 1311, and implementing regulations.

### **Relief**

39. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum total penalty of \$125,000. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule of 2004, as mandated by the Debt Collection Improvement Act of 1996, and the EPA's implementing regulations at 40 C.F.R. Parts 19 and 27, civil administrative penalties of up to \$11,000 per day for each day during which a violation continues, up to a maximum of \$157,500, may be assessed for violations of CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342, that occur after March 15, 2004. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rules of 2008 and 2013, civil administrative penalties of up to \$16,000 may be assessed per day for each day during which a violation continues, with up to a maximum of \$177,500 for a "Class II" administrative penalty action for violations of CWA Sections 301, 33 U.S.C. §§ 1311, that occurred between January 12, 2009 and December 6, 2013, and up to \$187,500 for violations that occurred after December 6, 2013.

In The Matter of  
Tony L. Brown and Joshua A. Brown  
d/b/a Riverview Cattle  
Complaint, Notice of Proposed  
Penalty and Opportunity for Hearing  
Docket No. CWA-07-2016-0053

40. The proposed penalty is based upon the facts alleged in this Complaint and upon the factors set forth in Section 309(g)(3) of CWA, 33 U.S.C. § 1319(g)(3), including taking into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.”

41. As required by Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for the public to comment on the matter, and present evidence in the event a hearing is held.

42. Based on the foregoing Finding of Violations, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region 7 hereby proposes to issue a Final Order Assessing an Administrative Penalty against the Respondents for the violations cited above, in the amount of up to \$16,000 per day for each day during which a violation occurred on or after January 12, 2009, which based on a minimum of six (6) days of discharge violations, results in a maximum penalty of up to \$96,000. In satisfaction of 40 C.F.R. § 22.14(a)(4)(ii), the severity of these violations, as considered by Complainant in proposing the penalty includes, but is not limited to the following: Respondents’ failure to have an NPDES permit and adequate process wastewater runoff controls resulted in unpermitted discharges of feedlot related pollutants and pathogens into the drain tile system and into the East Fork of the Des Moines River; the results of sampling of discharges during EPA’s 2014 inspection documented the presence of elevated levels of pollutants and of animal bacteria in the process wastewater discharging from the Riverview Facility (at levels as high as 4,110,000 E. coli units/100 ml); and the East Fork of the Des Moines River is designated for the protection of “primary contact” recreational use, “human health” and “aquatic life”, pursuant to Chapter 61 of the Iowa Administrative Code.

43. The proposed penalty is based on the best information available to Complainant at the time the Complaint is issued. The penalty may be adjusted if the Respondents establish bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

44. The EPA has notified the state of Iowa regarding this proposed action by mailing a copy of this document to the IDNR.

## NOTICE OF OPPORTUNITY FOR HEARING

### Answer and Request for Hearing

45. Respondents may request a hearing to contest any material fact contained in the Complaint above or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, a copy of which is enclosed herein

46. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to hearing, Respondents must file a written Answer within thirty (30) days of receipt of this Complaint if Respondents: a) contest any material fact upon which this Complaint is based; b) contends that the penalty proposed in this Complaint is inappropriate; or c) contends that it is entitled to judgment as a matter of law. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which a Respondent has any knowledge. Where Respondents have no knowledge of a particular factual allegation, the Answer shall so state. Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes an admission of the allegation. The Answer shall also state: a) the circumstances or arguments which are alleged to constitute the grounds of any defense; b) the facts that Respondents dispute; c) the basis for opposing the proposed penalty; and d) whether a hearing is requested.

47. Each Respondent or Respondents' written Answer to the Complaint, and any motions or other filings prior to the filing of the Answer, should be filed with the Regional Hearing Clerk at the following address:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

48. After the filing of a Respondent's Answer to the Complaint, the Hearing Clerk at EPA Headquarters will serve as the Regional Hearing Clerk, and all further filings in this matter must be filed with the Hearing Clerk at the following addresses, as appropriate:



In The Matter of  
Tony L. Brown and Joshua A. Brown  
d/b/a Riverview Cattle  
Complaint, Notice of Proposed  
Penalty and Opportunity for Hearing  
Docket No. CWA-07-2016-0053

If using the US Postal Service:

Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail code 1900R  
1200 Pennsylvania Avenue NW  
Washington, DC 20460.

If using UPS/FedEx/DHL:

Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Room M1200  
1300 Pennsylvania Avenue NW  
Washington, DC 20460.

49. Additionally, a Respondent may file and serve documents by email pursuant to the terms of the November 21, 2013, Standing Order, issued by EPA's Office of Administrative Law Judges, which may be found at the following internet address:

[http://www.epa.gov/oalj/orders/2013/Standing\\_Order\\_2013-11-21\\_E-Mail\\_Filing\\_&\\_Service\\_Signed.pdf](http://www.epa.gov/oalj/orders/2013/Standing_Order_2013-11-21_E-Mail_Filing_&_Service_Signed.pdf)

### **Default**

50. If, within thirty (30) days of receipt of a Complaint, a Respondent fails to file a written Answer to the Complaint; the Respondent may be found in default. Default by a Respondent constitutes, for the purposes of this proceeding, an admission of all facts alleged in the Complaint and a waiver of a Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalty proposed in the Complaint shall be assessed unless the Presiding Officer finds that the proposed penalty is clearly inconsistent with the record of the proceeding or CWA.

### **Informal Settlement Conference**

51. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of CWA and the regulations upon which this action is based. Regardless of whether Respondents request a hearing, Respondents may request an

In The Matter of  
Tony L. Brown and Joshua A. Brown  
d/b/a Riverview Cattle  
Complaint, Notice of Proposed  
Penalty and Opportunity for Hearing  
Docket No. CWA-07-2016-0053

40. The proposed penalty is based upon the facts alleged in this Complaint and upon the factors set forth in Section 309(g)(3) of CWA, 33 U.S.C. § 1319(g)(3), including taking into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.”

41. As required by Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), prior to the assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for the public to comment on the matter, and present evidence in the event a hearing is held.

42. Based on the foregoing Finding of Violations, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region 7 hereby proposes to issue a Final Order Assessing an Administrative Penalty against the Respondents for the violations cited above, in the amount of up to \$16,000 per day for each day during which a violation occurred on or after January 12, 2009, which based on a minimum of six (6) days of discharge violations, results in a maximum penalty of up to \$96,000. In satisfaction of 40 C.F.R. § 22.14(a)(4)(ii), the severity of these violations, as considered by Complainant in proposing the penalty includes, but is not limited to the following: Respondents’ failure to have an NPDES permit and adequate process wastewater runoff controls resulted in unpermitted discharges of feedlot related pollutants and pathogens into the drain tile system and into the East Fork of the Des Moines River; the results of sampling of discharges during EPA’s 2014 inspection documented the presence elevated levels of pollutants and of animal bacteria in the process wastewater discharging from the Riverview Facility (at levels as high as 4,110,000 E. coli units/100 ml); and the East Fork of the Des Moines River is designated for the protection of “primary contact” recreational use, “human health” and “aquatic life”, pursuant to Chapter 61 of Iowa Administrative Code.

43. The proposed penalty is based on the best information available to Complainant at the time the Complaint is issued. The penalty may be adjusted if the Respondents establish bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

44. The EPA has notified the state of Iowa regarding this proposed action by mailing a copy of this document to the IDNR.

In The Matter of  
Tony L. Brown and Joshua A. Brown  
d/b/a Riverview Cattle  
Complaint, Notice of Proposed  
Penalty and Opportunity for Hearing  
Docket No. CWA-07-2016-0053


informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request an informal settlement conference, please contact:

Howard Bunch, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
Telephone (913) 551-7879.

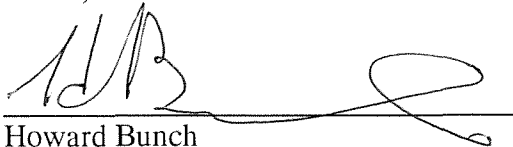
52. Any settlement which may be reached as a result of such a conference shall be recorded in a written consent agreement signed by all parties or their representatives and shall conform with the provisions of Section 22.18(b)(2) of the Consolidated Rules. No settlement or consent agreement shall dispose of this proceeding without a final order from the Regional Judicial Officer or the Regional Administrator.

53. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer must be filed.

Date: 5-10-16

  
Karen Flournoy  
Director  
Water, Wetlands and Pesticides Division

Date: 5-10-16

  
Howard Bunch  
Attorney  
Office of Regional Counsel

In The Matter of  
Tony L. Brown and Joshua A. Brown  
d/b/a Riverview Cattle  
Complaint, Notice of Proposed  
Penalty and Opportunity for Hearing  
Docket No. CWA-07-2016-0053

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint, and Notice of Opportunity for Hearing were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, on this date. A true and correct copy of the foregoing Complaint, and Notice of Opportunity for Hearing together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits were sent by certified mail to Respondents:

Mr. Tony L. Brown  
Riverview Cattle  
1893 570<sup>th</sup> Ave  
Armstrong, IA 50514  
Article No.: 7014 1200 0000 6124 2897

and

Mr. Joshua A. Brown  
Riverview Cattle  
1893 570<sup>th</sup> Ave  
Armstrong, IA 50514  
Article No.: 7014 1200 0000 6124 2903

return receipt requested, on this date:

5/10/2016  
Date

