



January 31, 2019

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Swift Beef Company  
Lone Tree Wastewater Treatment Facility  
24750 Weld County Road 62 1/2  
Greeley, CO 80631

Andre Nogueira  
President and Chief Executive Office  
JBS USA  
1770 Promontory Circle  
Greeley, CO 80634

Re: Notice of Violations and Intent to Sue under the Clean Water Act, 33 U.S.C. § 1251 et seq.

Through counsel at Public Justice, the Center for Biological Diversity and Food & Water Watch notify you of their intent to file civil litigation against Swift Beef Company and JBS USA over the Lone Tree Wastewater Treatment Facility's serious and ongoing violations of the Clean Water Act (CWA) and its permit (Permit No. CO0027707), which was issued under the CWA and Colorado Water Quality Control Act. Swift Beef Company and JBS USA are the permittees, owners and/or operators of the Lone Tree Wastewater Treatment Facility (sometimes the "Plant") and are responsible for the Plant's effluent discharges and violations of the Permit's limits and other requirements. At the expiration of sixty days from the date of this letter, the Center for Biological Diversity and Food & Water Watch intend to file suit under the CWA's citizen suit provision, 33 U.S.C. § 1365, and will seek declaratory and injunctive relief, civil penalties and all other relief authorized by law for these violations.

**I. THE CLEAN WATER ACT AND ITS REQUIREMENTS**

Congress enacted the CWA in 1972 in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251. The CWA prohibits "the discharge of any pollutant by any person" from a point source into navigable waters unless allowed by permit. 33 U.S.C. § 1311(a). *See Ecological Rights Found. v. Pacific Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000) (holding discharge of pollutants without permit, or in violation of permit, is illegal). The Act defines "point source" as "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 conveyed." 33 U.S.C. § 1362(14). "Pollutant" is defined to include any "industrial, municipal, and agricultural wastes" discharged into water. 33 U.S.C. § 1362(6).

CWA jurisdiction extends to “navigable waters,” a phrase defined as “the waters of the United States,” *id.* § 1362(7), which include tributaries to navigable waters. *Id.* § 328.2(a)(5).

The CWA is administered largely through its National Pollutant Discharge Elimination System (NPDES) permit program. 33 U.S.C. § 1342. The Environmental Protection Agency (EPA) may delegate this permitting system to the states. *See id.* § 1342(b); 40 C.F.R. § 123.61. In 1975, EPA delegated the permitting program to Colorado. *See* 52 Fed. Reg. 27,578 (July 22, 1987) (“State NPDES Program Status ... Approved State NPDES permit program ... Colorado ... 03/27/75[.]”); *see also* Colo. Rev. Stat. Ann. § 25-8-202(6)-(7). The Colorado Department of Public Health & Environment (CDPHE), through its Water Quality Control Division, is the state agency authorized to issue and enforce the NPDES permitting program, known locally as the Colorado Discharge Permit System (CDPS).

Ongoing violations of the CWA and NPDES permits are enforceable through the Act’s citizen suit provision. 33 U.S.C. § 1365(a); *id.* § 1365(f) (defining “effluent standard or limitation” to include permit terms and conditions). This provision requires citizens to send a notice letter to the owners/operators of a violating facility, EPA and the Chief Administrative Office of the state water pollution control agency before bringing suit. *Id.* § 1365(b). *See* 40 C.F.R. § 135.2. A citizen suit may proceed sixty days after the notice letter, unless either EPA or the relevant state has commenced and is diligently prosecuting a civil action in federal or state court. 33 U.S.C. § 1365(b)(1)(B). As required by the CWA, this letter provides notice of the violations that have occurred and continue to occur at the Lone Tree Plant. *See* 40 C.F.R. § 135.3(a).

## II. FACTUAL BACKGROUND

The South Platte River originates southwest of Denver in the Rocky Mountains and flows northeast through Denver and across the high plains of the northeastern Colorado. The river basin extends 21,000 square miles before entering Nebraska and eventually joining the Missouri River. Between the City of Greeley and the Nebraska border, CDPHE has designated agriculture, aquatic life, recreation and water supply as the beneficial uses of the South Platte River. CDPHE designated these same uses along Lone Tree Creek, a tributary stream that flows south into the South Platte east of Greeley. In general, use designations help ensure that Colorado’s waterways remain healthy and do not endanger public health and safety.

Both the Swift Beef Company and JBS USA own and/or operate the Lone Tree Wastewater Treatment Plant, located on 24750 Weld County Road 62 1/2, Greeley, Colorado 80631. JBS USA is headquartered in Greeley, Colorado and is a subsidiary of JBS S.A., a multi-national meat producer based in Brazil. Swift Beef Company and JBS USA are “person[s]” responsible for the violations alleged in this Notice Letter. *See* 33 U.S.C. § 1362(5) (defining “person” to include corporations). Swift Beef Company and JBS USA’s ownership and operation of the Plant have resulted, and continue to result, in effluent discharges that exceed the Permit’s limits and other requirements, in violation of the CWA. Swift Beef Company and JBS

USA actively control and make all decisions regarding the treatment and release of wastewater into Lone Tree Creek from the Plant. The current and effective CDPS Permit CO0027707 was issued to “Swift Beef Company.”

The Plant accepts and treats wastewater generated by two nearby slaughterhouses—JBS’s beef slaughterhouse and Mountain States Rosen’s lamb slaughterhouse. The wastewater from these two slaughterhouses is combined and pumped east six miles to the Plant through a force-main pipeline. The Plant accepts approximately 3-4 millions gallons of wastewater per day from the slaughterhouses. Upon arrival at Lone Tree Plant, the wastewater—which contains animal fat, meat, blood, *E. coli*, ammonia and excrement—is stored and treated in the Plant’s four anaerobic lagoons, polishing ponds, chlorine contact chamber and aeration systems.

The treated wastewater is discharged through a single point source into Lone Tree Creek. Lone Tree Creek is a perennial stream that flows south into the South Platte River. The distance between the Plant’s discharge point in Lone Tree Creek and its confluence with the South Platte is less than a mile; the confluence is immediately west of Scout Island and just downstream of where the Cache la Poudre River joins the South Platte River.

### **III. THE LONE TREE WASTEWATER DISCHARGE PERMIT AND VIOLATIONS**

#### **A. Permit Terms and Conditions**

The Plant’s discharges are regulated under CDPS Permit No. CO0027707. The Plant first obtained the Permit in 1978 and the state renewed the Permit several times. The most recent version was issued in 2012. Although the Permit expired on November 30, 2017, on December 1, 2017 the state administratively continued the 2012 Permit. Consequently, the 2012 Permit controls.

The Permit authorizes Swift Beef Company and JBS USA to discharge treated animal wastewater into Lone Tree Creek from one discharge point. The Permit’s discharge limits at this discharge point vary, however, depending upon three production levels at the two slaughterhouses. CDPS Permit, Part I(A)(2).<sup>1</sup> When slaughterhouse production exceeds level one, the Plant must give notice to the state before increasing production to the second or third level.

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<sup>1</sup> Production level 1 (001A) applies when the average daily slaughter of beef (average weight 1,300 lbs.) ranges from 3,000 head/day to 4,699 head/day; level 2 (002A) applies when beef slaughter ranges from 4,700 head/day to 5,500 head/day; level 3 (003A) applies when beef slaughter ranges from 5,501 head/day to 6,000 head/day. *See* CDPS Permit, Part I(A)(1). For all three production levels, the average daily slaughter of lamb (average weight 160 lbs.) is set at 2,500 head/day. *Id.*

The Permit obligates Swift Beef Company and JBS USA to self-monitor by sampling its point source discharges in accordance with specified instructions that address timing (daily maximums, seven- and 30-day averages), frequency (daily, monthly and quarterly) and sample type (calculated, composite (4) and grab (1)). Sampling must occur after Swift Beef Company and JBS USA disinfects the animal wastewater and before the effluent mixes with the receiving waters in Lone Tree Creek. CDPS Permit, Part I(A)(1). Swift Beef Company and JBS USA must provide the state and EPA with monthly compilations of its effluent concentrations and Whole Effluent Testing (WET) results in discharge monitoring reports (DMRs). CDPS Permit, Part I(A)(2); CDPS Permit, Part I(D)(1). Violations occur when Swift Beef Company and JBS USA “fail to comply with any terms and/or conditions of this permit” or when there is a “discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized.” CDPS Permit, Part II(B)(8).

**B. Effluent Discharge Limits and Requirements**

Based on a review of publicly available documents, the Center for Biological Diversity and Food & Water Watch are informed and believe that the Lone Tree Plant is in ongoing violation of the Permit and the CWA. This information is derived from the Plant’s physical DMR forms (EPA Form 3320) submitted to the state and the Plant’s filings through EPA’s NetDMR system, both submitted under penalty of perjury. These data provided to EPA are available on EPA’s Enforcement and Compliance History Online (ECHO) website.

**1) Numerical Violations for Specific Pollutants**

Part I(A)(2) of the Permit sets limits for Swift Beef Company and JBS USA’s discharges into Lone Tree Creek for effluent flow, pH, fecal coliform, chlorine, nitrogen (total and ammonia), oil and grease, BOD and total suspended solids. For each of these parameters, the Permit establishes both a monthly limit and a daily maximum limit for each month. Discharges exceeding these limits are described below in Table 1.<sup>2</sup> These are violations of the CWA and the Permit and are enforceable through the CWA’s citizen suit provision.

<b>TABLE 1: VIOLATIONS OF EFFLUENT LIMITATIONS FOR DISCHARGES TO SURFACE WATER</b>					
<b>Date (Monthly Monitoring Period; specific date if available)</b>	<b>Parameter</b>	<b>Units</b>	<b>Limit (maximum)</b>	<b>Sample Measurement</b>	<b>Statistical Basis</b>

<sup>2</sup> Unless a parameter’s limit is based on a daily maximum value, the number of days in the monitoring period equals the number of days of violation for that parameter.

09/01/2018 – 09/30/2018	Nitrogen, ammonia total (as N)	mg/L	2.1	2.91	30-day Average (composite)
09/01/2018 – 09/30/2018	Nitrogen, ammonia total (as N)	mg/L	8	14.6	Daily Maximum (composite)
09/01/2018 – 09/30/2018	Solids, total suspended	lb/day	3,515	6,150	Daily Maximum (composite)
07/01/2018 – 07/31/2018 (July 1)	Nitrogen, ammonia total (as N)	mg/L	8	13.6	Daily Maximum (composite)
07/01/2018 – 07/31/2018	Solids, total suspended	lb/day	1,368	2,561	30-day Average (composite)
07/01/2018 – 07/31/2018 (July 26, 27)	Solids, total suspended	lb/day	2,735	16,494	Daily Maximum (composite)
06/01/2018 – 06/30/2018	Nitrogen, ammonia total (as N)	mg/L	2.5	6.41	30-day Average (composite)
06/01/2018 – 06/30/2018	Nitrogen, ammonia total (as N)	mg/L	8	16.5	Daily Maximum (composite)
06/01/2018 – 06/30/2018	Solids, total suspended	lb/day	1,758	3,650	30-day Average (composite)
06/01/2018 – 06/30/2018	Solids, total suspended	lb/day	3,515	11,675	Daily Maximum (composite)
04/01/2018 – 04/30/2018	Nitrogen, ammonia total (as N)	mg/L	8	8.22	Daily Maximum (composite)
01/01/2016 – 01/31/2016	Solids, total suspended	lb/day	3,515	7,470	Daily Maximum (composite)
05/01/2015 – 05/31/2015	Nitrogen, ammonia total (as N)	mg/L	8	9.28	Daily Maximum (composite)

2) Violation of Notification Requirements

Upon violating a Permit limit, Swift Beef Company and JBS USA must provide: a description of the cause of noncompliance, the period of noncompliance, including the exact days and time, anticipated time the discharge will return to compliance and steps being taken to reduce, eliminate and prevent the recurrence of the noncomplying discharge. CDPS Permit, Part II(A)(4)(a) & (b).

Despite the aforementioned effluent-limit violations, Swift Beef Company and JBS USA have not submitted the required reports and necessary information to the state or EPA. The Swift Beef Company and JBS USA are in violation of the Permit's notification and reporting requirements, *see* CDPS Permit, Part II(A)(4)(a) & (b), and these violations are enforceable through the CWA's citizen suit provision. *See* 33 U.S.C. § 1365(a)(1), § 1365(f)(6). Each day that Swift Beef Company and JBS USA do not provide the required information about each violation to the state is a separate and distinct violation of the CWA and the Permit.

### C. WET Testing Limits and Requirements

The Plant is subject to Colorado's narrative toxicity standard. That standard is set out in Regulation 31.11(1)(a)(iv) of the Basic Standards and Methodologies for Surface Water and provides: "state water shall be free from substances attributable to human-caused point source and nonpoint source discharge in amounts, concentrations or combinations which are harmful to the beneficial uses or toxic to humans, animals, plants or aquatic life."

To implement this toxicity standard, the Permit requires Swift Beef Company and JBS USA to conduct Whole Effluent Toxicity tests of discharges from its discharge point (or Outfall) and meet applicable standards that ensure the water is not unacceptably toxic. WET testing assesses the aggregate toxic effect of a wastewater sample measured by a test organism's response: lethal, impaired growth or reproduction or no observed effect. The tests required by the Permit measure the effect of the Plant's effluent at varying concentrations on two aquatic organisms (*ceriodaphnia dubia* and *pimephales promelas*). Swift Beef Company and JBS USA must perform WET testing quarterly, using three separate composite (four) samples.

The Permit mandates the application of two specific WET tests to evaluate chronic toxicity. The first is the 25-percent seven-day inhibition concentration (IC25) standard, which identifies the effluent concentration at which no more than 25 percent of the test organisms experience reproduction or growth inhibition after seven days of exposure. For example, if a test yields an IC25 value of 70 percent, that means a sample containing 70 percent effluent—diluted with 30 percent fresh water—caused inhibited reproduction or growth in 25 percent of the test organisms. Here, the Permit's standard is that 100 percent effluent (*i.e.* pure effluent without any dilution) causes no more than 25 percent of the test organisms exhibit reproductive or growth inhibition at the end of a seven-day period.

The second test is NOEC ("no observed effects concentration"), which evaluates the point at which there is an effluent concentration that results in "no observed effects." NOEC

determines the highest concentration of wastewater effluent that shows no statistically detectable effect on the aquatic organism. Here, too, the Permit’s concentration standard is 100%, such that there must be no observed effects when the organisms are placed in pure effluent.

The Permit’s WET testing requirements also require that Swift Beef Company and JBS USA:

- 1) submit, along with the DMRs containing the WET testing results, all laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test and copies of any chain of custody forms, and
- 2) when the WET testing results show a violation of the Permit limit—both NOEC and IC25 are below 100%, or either the NOEC or the IC25 are below 100% for two consecutive monitoring periods—conduct accelerated testing using the single species found to be more sensitive, or conduct a Toxicity Identification Evaluation or a Toxicity Reduction Evaluation.

1) Violations of the WET Testing Limits

Swift Beef Company and JBS USA’s violations of the WET testing requirements are detailed below. Table 2 contains the reported quarterly toxicity test results and reveals multiple and continuous violations of the Permit’s limits.

<b>TABLE 2: VIOLATIONS OF CHRONIC WHOLE EFFLUENT TOXICITY LIMIT</b>						
<b>Date: (Quarterly Monitoring Period)</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Units</b>	<b>Limit (min)</b>	<b>Instream Waste Concentration</b>	<b>Limit Type</b>
07/01/2018 – 09/30/2018	002A	Chronic WET 7- day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	27.55	Minimum
		Chronic WET 7- day NOEC ( <i>Ceriodaphnia dubia</i> )			80	
03/01/2018 – 06/30/2018	002A	Chronic WET 7- day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	75.37	Minimum
		Chronic WET 7- day NOEC ( <i>Ceriodaphnia dubia</i> )			60	
03/01/2018	002A	Chronic WET 7-	percent	100	96.11	Minimum

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– 06/30/2018		day IC25 ( <i>Pimephales promelas</i> )			60	
		Chronic WET 7-day NOEC ( <i>Pimephales promelas</i> )				
01/01/2018 – 03/31/2018	002A	Chronic WET 7-day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	84.26	Minimum
		Chronic WET 7-day NOEC ( <i>Ceriodaphnia dubia</i> )			80	
10/01/2017 – 12/31/2017	002A	Chronic WET 7-day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	84.75	Minimum
		Chronic WET 7-day NOEC ( <i>Ceriodaphnia dubia</i> )			80	
07/01/2017 – 09/30/2017	001A	Chronic WET 7-day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	64.92	Minimum
		Chronic WET 7-day NOEC ( <i>Ceriodaphnia dubia</i> )			60	
04/01/2017 – 06/30/2017	002A	Chronic WET 7-day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	69.40	Minimum
		Chronic WET 7-day NOEC ( <i>Ceriodaphnia dubia</i> )			60	
01/01/2017 – 03/31/2017	002A	Chronic WET 7-day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	79.38	Minimum
		Chronic WET 7-day NOEC ( <i>Ceriodaphnia dubia</i> )			80	
10/01/2016 – 12/31/2016	002A	Chronic WET 7-day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	67.43	Minimum
		Chronic WET 7-day NOEC			60	

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		( <i>Ceriodaphnia dubia</i> )				
07/01/2016 – 09/30/2016	002A	Chronic WET 7- day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	86.46	Minimum
		Chronic WET 7- day NOEC ( <i>Ceriodaphnia dubia</i> )			80	
04/01/2016 – 06/30/2016	002A	Chronic WET 7- day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	86	Minimum
		Chronic WET 7- day NOEC ( <i>Ceriodaphnia dubia</i> )			80	
01/01/2016 – 03/31/2016	001A	Chronic WET 7- day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	75.45	Minimum
		Chronic WET 7- day NOEC ( <i>Ceriodaphnia dubia</i> )			80	
10/01/2015 – 12/31/2015	001A	Chronic WET 7- day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	94.02	Minimum
		Chronic WET 7- day NOEC ( <i>Ceriodaphnia dubia</i> )			80	
07/01/2015 – 09/30/2015	002A	Chronic WET 7- day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	90.74	Minimum
		Chronic WET 7- day NOEC ( <i>Ceriodaphnia dubia</i> )			80	
04/01/2015 – 06/30/2015	002A	Chronic WET 7- day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	95.97	Minimum
		Chronic WET 7- day NOEC ( <i>Ceriodaphnia dubia</i> )			80	
01/01/2015 – 03/31/2015	001A	Chronic WET 7- day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	65.75	Minimum
		Chronic WET 7- day NOEC			60	

		( <i>Ceriodaphnia dubia</i> )				
10/01/2014 – 12/31/2014	002A	Chronic WET 7- day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	72.09	Minimum
		Chronic WET 7- day NOEC ( <i>Ceriodaphnia dubia</i> )			60	
07/01/2014 – 09/30/2014	002A	Chronic WET 7- day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	80.67	Minimum
		Chronic WET 7- day NOEC ( <i>Ceriodaphnia dubia</i> )			60	
04/01/2014 – 06/30/2014	002A	Chronic WET 7- day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	65.28	Minimum
		Chronic WET 7- day NOEC ( <i>Ceriodaphnia dubia</i> )			60	
04/01/2014 – 06/30/2014	003A	Chronic WET 7- day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	65.28	Minimum
		Chronic WET 7- day NOEC ( <i>Ceriodaphnia dubia</i> )			60	
01/01/2014 – 03/31/2014	002A	Chronic WET 7- day IC25 ( <i>Ceriodaphnia dubia</i> )	percent	100	55.08	Minimum
		Chronic WET 7- day NOEC ( <i>Ceriodaphnia dubia</i> )			40	

As detailed in Table 2, every chronic WET testing result since January 1, 2014 has violated limits in the Plant’s CDPS Permit, Part 1(B)(3)(b). Accordingly, the Swift Beef Company and JBS USA are violating the CWA and these violations are enforceable through the CWA’s citizen suit provision. *See* 33 U.S.C. § 1365(a)(1), § 1365(f)(6).

## 2) Violations of Notification Requirements

The Permit requires that Swift Beef Company and JBS USA, when there is a WET testing limit, disclose to the state and EPA information about the violation and how Swift Beef

Company and JBS USA will correct the problem. CDPS Permit, Part I(B)(3)(b) (notification required within 14 days of WET testing violation); CDPS Permit, Part II(A)(4)(a) & (b). For each violation of the WET testing limits identified in Table 2, Swift Beef Company and JBS USA failed to provide notification and report information to CDPHE or EPA. The Swift Beef Company and JBS USA are therefore in violation of the Permit's notification and reporting requirements and the CWA. *See* CDPS Permit, Part II(A)(4)(a) & (b). These violations are enforceable through the CWA's citizen suit provision. *See* 33 U.S.C. § 1365(a)(1), § 1365(f)(6). Each day that Swift Beef Company and JBS USA do not provide the required information about each violation to the state is a separate and distinct violation of the CWA and the Permit.

3) Violations of Requirement to Submit Information about WET Testing

The Permit requires Swift Beef Company and JBS USA to provide CDPHE with laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test and copies of any chain of custody forms. For each violation of the WET testing limits identified in Table 2, Swift Beef Company and JBS USA have not submitted the required information about the WET tests performed. Here, too, the Swift Beef Company and JBS USA are violating the Permit's requirements and the CWA. *See* CDPS Permit, Part I(B)(3)(a). These violations are enforceable through the CWA's citizen suit provision. *See* 33 U.S.C. § 1365(a)(1), § 1365(f)(6). Each day that Swift Beef Company and JBS USA do not provide the WET testing information to the state is a separate and distinct violation of the CWA and the Permit.

4) Violations of Requirement to Perform Accelerated Testing

For each violation of the WET testing limits and standards identified in Table 2, the Permit requires Swift Beef Company and JBS USA to conduct accelerated testing using the more sensitive species, or, alternatively, a Toxicity Identification Evaluation or a Toxicity Reduction Evaluation. One of these Automatic Compliance Responses is mandated by the CDPS Permit, Part I(B)(3)(C) due to violations of the WET testing limits. Swift Beef Company and JBS USA have not performed any of the accelerated testing requirements after violating the WET testing standards in each quarter since January 2014. By failing to perform these additional tests, the Swift Beef Company and JBS USA are violating the Permit's limits and standards and the CWA. These violations are enforceable through the CWA's citizen suit provision. *See* 33 U.S.C. § 1365(a)(1), § 1365(f)(6). Each day that Swift Beef Company and JBS USA do not perform the additional testing is a separate and distinct violation of the CWA and the Permit.

D. Compliance Schedule for Completing Ammonia Reduction Project

The Permit includes a compliance schedule for tasks associated with an ammonia reduction project, which has been deemed essential to comply with ammonia limits and WET testing standards. *See* CDPS Permit, Part I(B)(2)(a). The schedule obligates Swift Beef

Company and JBS USA to take specific steps over a five-year period and submit annual reports to CDPHE detailing the steps being taken:

- by September 30, 2013, develop and submit engineering/activity plans for an ammonia reduction project;
- by September 30, 2014, submit progress report for completing an ammonia reduction project;
- by September 30, 2015, submit progress report for completing an ammonia reduction project;
- by September 30, 2016, submit progress report for completing an ammonia reduction project;
- by September 30, 2017, complete the ammonia reduction project that will allow Swift Beef Company and JBS USA to satisfy ammonia limits at the Plant.

*Id.* Each deadline contains a 14-day grace period. *Id.*

Swift Beef Company and JBS USA have violated the compliance schedule by not: submitting the engineering/activity plans to CDPHE by September 30, 2013 and the annual status reports by September 30, 2014, 2015, 2016; or completing construction and/or changing processes by September 30, 2017 that ensure compliance with the Permit's ammonia limits. By failing to comply with this schedule, the Swift Beef Company and JBS USA are violating the Permit's limits and standards and the CWA. These violations are enforceable through the CWA's citizen suit provision. *See* 33 U.S.C. § 1365(a)(1), § 1365(f)(6). Each day that Swift Beef Company and JBS USA do not comply with this schedule is a separate and distinct violation of the CWA and the Permit.

#### **IV. RELIEF TO BE REQUESTED**

To remedy these violations, we intend to ask that the court order the Swift Beef Company and JBS USA to pay civil penalties, as authorized by 33 U.S.C. § 1365, based on the factors set forth in 33 U.S.C. § 1319(d) and calculated in accordance with 40 C.F.R. § 19.4. Swift Beef Company and JBS USA are liable for violations occurring each day before the date of this letter and for every day these violations continue. Penalties are calculated based on the following: up to \$37,500 per day for each violation from January 12, 2009 through November 2, 2015; and \$53,484 per day for each violation occurring after November 2, 2015. *See* 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

We will also seek declarative relief, confirming that the Swift Beef Company and JBS USA have violated and continue to violate the CWA. We will seek injunctive relief, 33 U.S.C. § 1365, that requires the Swift Beef Company and JBS USA to take all actions necessary to comply with the Permit and all other applicable CWA and Colorado Water Quality Control Act requirements, prevent further water pollution at the Lone Tree Plant and remediate any ongoing pollution and environmental harm caused by the Plant's illegal discharges.

Lastly, we intend to seek the recovery of costs, including attorney fees, as authorized by the CWA, 33 U.S.C. § 1365(d).

## **V. PARTIES GIVING NOTICE**

The parties giving notice, including their full names, addresses and telephone numbers, are as follows:

Center for Biological Diversity  
Attn: Michael Saul  
1536 Wynkoop St., Ste. 421  
Denver, Colorado 80202  
(303) 915-8308

Food & Water Watch  
Attn: Jason Harrison  
1801 N. Williams St., Ste. 400  
Denver, Colorado 80218  
(720) 372-1389

Center for Biological Diversity is a national non-profit, 501(c)(3) organization with multiple offices and thousands of members in Colorado. The Center has programs and campaigns that address the plight of imperiled species in this country, including the extensive harms caused by animal agriculture on biodiversity, public health, and sustainable food systems. Through its efforts, the Center has developed outreach, education, and policy materials on the negative effects of industrial agricultural systems on our environment, including as a result of pesticide use, greenhouse gas emissions, pollution from animal waste, and overuse of water resources.

Food & Water Watch is a national nonprofit organization that champions healthy food and clean water for all by standing up to corporations that put profits before people and by advocating for a democracy that improves people's lives and protects the environment. FWW maintains an office in Denver and has more than 12,000 members in Colorado. Factory farming is one of FWW's priority issues, and FWW is engaged in numerous campaigns to hold the factory farm industry—including corporate slaughter facilities—accountable for its adverse impacts on rural communities and the environment. Through grassroots organizing, policy advocacy, research, communications and litigation, FWW works to increase transparency about the factory farm industry's harmful impacts, reduce meat companies' pollution of our waterways and strengthen public and government oversight of livestock production.

Members of both organizations enjoy the waters of Lone Tree Creek and the South Platter River and the surrounding aquatic environment for recreational activities, including

fishing, swimming, boating, bird and wildlife viewing, hiking and walking and aesthetic enjoyment. Unauthorized and illegal discharges from the Plant injure members engaged in each of these uses.

Counsel for Center for Biological Diversity and Food and Water Watch has been retained and their contact information is:

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Please contact Neil Levine at Public Justice if you would like to discuss the content of this letter.

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Center for Biological Diversity and Food & Water Watch believe that the data and information contained in this letter provide Swift Beef Company and JBS USA with sufficient information about the alleged violations and the ability to come into compliance with the CWA and the Permit. They intend to file a citizen suit under the CWA, 33 U.S.C. § 1365(a), against Swift Beef Company and JBS USA and their agents for the above-referenced violations upon the

expiration of the 60-day notice period. Additional information, including information not yet available to the Center for Biological Diversity and Food & Water Watch, may reveal additional violations, which this letter intends to cover.

These organizations would welcome the opportunity to discuss this matter with you and potentially resolve any disputes so as to avoid time-intensive and resource-consuming litigation. Please contact us promptly if you believe we do not understand facts about the Plant and the alleged violations correctly or wish to discuss effective remedies for the violations noted in this letter. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60-day period. Thank you.

Sincerely,

*/s/ Neil Levine*

Neil Levine  
Jason Connor  
Public Justice

Hannah Connor  
Center for Biological Diversity

Tarah Heinzen  
Food & Water Watch

cc:

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Regional Administrator Douglas Benevento  
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