

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.

CENTER FOR BIOLOGICAL DIVERSITY and  
FOOD & WATER WATCH,

Plaintiffs,

v.

SWIFT BEEF COMPANY,

Defendant.

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**SUPPLEMENTAL COMPLAINT**

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**INTRODUCTION**

1. Plaintiffs Center for Biological Diversity and Food & Water Watch bring this civil action to enforce the Federal Water Pollution Control Act (commonly known as the Clean Water Act and herein referred to as the “CWA”), 33 U.S.C. § 1251 *et seq.*, against Defendant Swift Beef Company (Swift Beef), a/k/a JBS Swift Beef Company. At its Lone Tree Wastewater Treatment Facility (Lone Tree Facility) in Greeley, Colorado, Swift Beef accepts and treats wastes from two animal slaughterhouses and then discharges the effluent into Lone Tree Creek, a tributary of the South Platte River, under the authority of a CWA permit (the “Permit”) issued by the Water Quality Control Division (Water Division) of the Colorado Department of Public Health and Environment (Colorado Department). Swift Beef has violated and will continue to violate the CWA and the terms and limitations found in its Permit.

2. Plaintiffs and their members are harmed by Swift Beef’s violations and actions that pollute Lone Tree Creek and the South Platte River, adversely impact the aquatic

environment, and contribute to regional air pollution. As authorized by the CWA's citizen suit provision, 33 U.S.C. § 1365(a), Plaintiffs seek declaratory and injunctive relief, an assessment of civil penalties, attorney and expert witness fees, and other relief that the Court deems appropriate to remedy Swift Beef's violations of federal law.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action under 33 U.S.C. § 1365(a) (CWA's citizen suit provision) and 28 U.S.C. § 1331 (federal question jurisdiction). The requested relief is proper under 28 U.S.C. §§ 2201 and 2202 and 33 U.S.C. §§ 1319 and 1365(a).

4. On January 31, 2019, Plaintiffs provided Swift Beef—via U.S. certified mail, returned receipt requested—with notice of intent to sue for CWA violations at the Lone Tree Facility, as required by 33 U.S.C. § 1365(b). Exh. 1. On July 24, 2020, Plaintiffs provided Swift Beef with a supplemental notice of intent to sue letter for CWA violations occurring in 2020. Exh. 2. Plaintiffs also provided the notice letters to the U.S. Environmental Protection Agency (EPA) (both EPA headquarters and EPA Region 8), the U.S. Attorney General, the Colorado Department, and Swift Beef's registered agents.

5. More than sixty days have passed since Plaintiffs sent the original and supplemental notices and Swift Beef received the m notice. Neither the EPA nor the State of Colorado has commenced and is diligently prosecuting a civil or criminal action in court to enforce and correct the CWA violations that Plaintiffs are alleging in this complaint. Neither EPA nor the Colorado Department commenced an administrative penalty action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), or under a comparable state law to redress the alleged violations before Plaintiffs issued the ~~January 31, 2019~~ notice letters. Swift Beef's violations of the CWA and its CWA Permit have been repeated, are ongoing and are likely to continue to

occur into the future absent judicial relief.

6. Venue is proper in the District Court for the District of Colorado pursuant to 33 U.S.C. § 1365(c)(1). Plaintiffs have offices and members throughout Colorado. Swift Beef has offices in Greeley, Colorado and Swift Beef’s Lone Tree Facility is located in Greeley, Colorado.

### **PARTIES**

7. The Center for Biological Diversity is a national non-profit, conservation organization with multiple offices, including in Denver, Colorado, and over 30,000 members and supporters in Colorado. To fulfill its mission, the Center has programs and campaigns that address the plight of the nation’s imperiled species and habitats, including the extensive harms caused by large-scale animal agriculture on biodiversity, water quality, public health, and sustainable food systems. To educate the public and its members and supporters, the Center has developed outreach and policy materials on the negative effects of industrial agricultural systems on our environment, including from pesticide use, greenhouse gas and other harmful air emissions, water pollution from animal wastes, and the overuse of water resources.

8. Food & Water Watch is a national nonprofit organization. Food & Water Watch maintains an office in Denver and has more than 12,000 members in Colorado. As part of its mission, Food & Water Watch champions healthy food and clean water by confronting corporations that put profits before people and by advocating for a democracy that protects the environment and improves people’s lives. To fulfill its mission, FWW tackles water pollution problems, large-scale factory farming, and slaughterhouses. The organization is engaged in numerous campaigns to hold food-industry polluters—including corporate slaughterhouses and their wastewater treatment facilities—accountable for adverse impacts on rural communities and

the environment. Through grassroots organizing, policy advocacy, research, communications and litigation, Food & Water Watch works to increase transparency about the factory farm industry's harmful impacts, reduce pollution of the nation's waterways and air quality caused by industrial meat producers, and strengthen public and government oversight of livestock production.

9. The Center for Biological Diversity and Food & Water Watch bring this lawsuit on behalf of themselves and their members. To advance their missions, the organizations engage in actions that protect and restore major waterways, their tributaries and watersheds, the fish and wildlife and people that depend on these aquatic environments, and regional air quality. They also take actions that increase transparency and accountability in the meat industry for all of its adverse environmental impacts. Members of both the Center for Biological Diversity and Food & Water Watch use and enjoy the waters of Lone Tree Creek and the South Platte River as well as the aquatic environment and dependent wildlife associated with these waterways for aesthetic enjoyment and recreational activities, including fishing, hunting, swimming, boating, bird and wildlife viewing, hiking, and walking; they intend to continue to do so. Swift Beef's unauthorized and illegal discharges from the Lone Tree Facility and noncompliance with the Permit's terms—including terms requiring Swift Beef to conduct testing and to provide detailed information about its effluent discharges, sampling, and testing—injure members that engage in these recreational and aesthetic uses and deter and limit their uses and enjoyment of these places now and in the future. These injuries will continue unless the Court grants the requested relief.

10. Swift Beef's violations of the CWA and its CWA Permit interfere with and undermine the organizations' ability to fulfill their missions and objectives. The Center for Biological Diversity and Food & Water Watch have directed some of their resources to identify

and counteract Swift Beef's illegal effluent discharges into Lone Tree Creek and the South Platte River and its failure to comply with procedural and informational Permit requirements. The organizations have spent staff time and resources informing and educating their members and supporters and the public about the Lone Tree Facility and Swift Beef's nearby beef slaughterhouse—which pipes its wastewater to the Lone Tree Facility—and the Facility's CWA violations. In order to inform and educate members, supporters, and the public about the Lone Tree Facility and counteract Swift Beef's CWA violations, the organizations' staff have researched and investigated industry practices at slaughterhouses, hide processing techniques, and technologies available for animal-waste treatment facilities; engaged with local and regional media outlets to promote awareness about the Lone Tree Facility and its Permit violations; had meetings and discussions with the Water Division and EPA about their response to years of CWA violations at the Facility; notified members and supporters about the pollution in the South Platte River and Lone Tree Creek due to violations at the Lone Tree Facility and the resulting risk to public health and the environment; monitored the Water Division's Permit renewal process for the Lone Tree Facility because the Permit was administratively extended in December 2017; and engaged with consultants to prepare for the permit-renewal administrative process. Swift Beef's violations of its Permit and the CWA impair Plaintiffs' ability to accomplish their missions and have caused them to alter their activities.

11. An injunction order requiring Swift Beef to comply fully with the CWA and all terms of the Permit would redress Plaintiffs' and their members' injuries. Injunctive relief that addresses Swift Beef's operational decisions and technological problems can curb or eliminate future pollution that is rooted in processing and production levels at the Beef Plant and found in effluent discharges from the Lone Tree Facility. Declaratory relief and civil penalties, if

awarded, would deter future CWA violations by Swift Beef at the Lone Tree Facility.

12. Defendant Swift Beef Company is the owner of the Lone Tree Facility. Swift Beef Company is the operator of the Lone Tree Facility. Swift Beef Company is the CWA permittee at the Lone Tree Facility. Swift Beef Company is also known as and referred to as JBS Swift Beef Company. Swift Beef Company is a Delaware Corporation doing business in Colorado. Swift Beef Company has engaged in the activities that have resulted in violations of the Permit and the CWA. Swift Beef Company's business office address is 1770 Promontory Circle, Greeley, Colorado 80634. Swift Beef Company is a corporation. Swift Beef Company is a "person" within the meaning of 33 U.S.C. § 1362(5). Swift Beef Company's registered agent is the Corporation Services Company, located at 1900 W. Littleton Blvd., Littleton, Colorado 80120. Swift Beef Company is a wholly owned subsidiary of JBS USA and JBS S.A. JBS S.A. is a Brazilian company that is the world's largest producer of beef, chicken, and pork.

13. Swift Beef Company also owns and operates a cattle slaughterhouse and meat and hide processing plant (the Beef Plant") located in Greeley, Colorado. The Beef Plant's address is 800 North 8<sup>th</sup> Avenue, Greeley, Colorado 80632. Swift Beef Company sends the Beef Plant's wastewater to the Lone Tree Facility.

14. JBS USA maintains JBS S.A.'s U.S. headquarters in Greeley, Colorado. JBS USA address is 1770 Promontory Circle, Greeley, Colorado 80634. In 2017, JBS USA had over \$50 billion in U.S. sales, with \$27.8 billion in revenue. JBS USA oversees and controls operations at the Lone Tree Facility. JBS USA oversees and controls operations at Beef Plant.

## **LEGAL AND FACTUAL BACKGROUND**

### **I. CLEAN WATER ACT**

15. Congress enacted the CWA "to restore and maintain the chemical, physical and

biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The CWA prohibits the discharge of any pollutant from a point source into navigable waters, unless the discharge is authorized by and complies with a CWA permit. 33 U.S.C. §§ 1311(a), 1342.

16. The CWA is implemented in part through its National Pollutant Discharge Elimination System (NPDES) permit program. 33 U.S.C. § 1342. NPDES permits, which are issued by EPA, impose effluent limitations and standards designed to protect water quality on the discharger. EPA may delegate this program to the states, *id.* § 1342(b) and 40 C.F.R. § 123.61, which it did for Colorado in 1975. *See* <https://www.epa.gov/npdes/npdes-state-program-information> (showing Colorado was authorized to administer NPDES permitting program on March 27, 1975). *See* Colo. Rev. Stat. Ann. § 25-8-202(6)-(7). The Colorado Department, through its Water Division, is the state agency authorized to issue permits and enforce Colorado’s NPDES permitting program, which is known as the Colorado Discharge Permit System.

17. The CWA authorizes citizens to commence enforcement actions against any person “who is alleged to be in violation” of “an effluent standard or limitation.” 33 U.S.C. § 1365(a). An “effluent standard or limitation” includes permit terms, conditions, limits and requirements. *Id.* § 1365(f)(6). Discharges that violate an NPDES permit also violate the CWA. 40 C.F.R. § 122.41(a).

18. In a citizen suit brought under Section 505(a) of the CWA, 33 U.S.C. § 1319(a), the district court has jurisdiction to order a defendant to comply with the CWA and to assess civil penalties against a defendant under Section 309(d) of the CWA, 33 U.S.C. § 1365(d). Section 309(d) of the CWA provides that any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued pursuant to

Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty payable to the United States of up to \$25,000 per day for each violation. 33 U.S.C. § 1319(d). Under the Federal Civil Penalties Adjustment Act of 1990, 28 U.S.C § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, the court may assess a CWA civil penalty of up to \$37,500 per day for each violation that occurred after December 6, 2013, and up to \$54,833 per day for each violation that occurred after November 2, 2015 where penalties are assessed on or after January 15, 2019. 40 C.F.R. § 19.4; 84 Fed. Reg. 2056, 2059 (Feb. 6, 2019). And under Section 505(d) of the CWA, the court “may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such an award is appropriate.” 33 U.S.C § 1365(d).

## **II. LONE TREE WASTEWATER TREATMENT FACILITY**

19. The Lone Tree Facility is located at 24750 Weld County Road 62 ½ in Greeley, Colorado, which is several miles east of downtown Greeley. Lone Tree Creek flows perennially through the Facility. Its confluence with the South Platte River is approximately one mile south of the Facility site. Lone Tree Creek is a tributary of the South Platte River. Lone Tree Creek and the South Platte River are waters of the United States within the meaning of 33 U.S.C. § 1362(7). The South Platte River, upstream and downstream of its confluence with Lone Tree Creek, provides habitat for fish, birds, and upland wildlife.

20. Swift Beef purchased the Lone Tree Facility in 2007. At the same time, Swift Beef purchased related facilities in and around Greeley, including a feedlot and two slaughterhouses.

21. Swift Beef owns and operates a cattle slaughterhouse and meat and hide processing plant—the Beef Plant—in Greeley, Colorado. At the Beef Plant, Swift Beef kills

between 3000 and 6000 animals per day. Slaughtering animals at the Beef Plant generates an animal wastewater stream that includes animal fat, meat, blood, *e. coli*, ammonia, and excrement. Swift Beef creates an additional waste stream at the Beef Plant by processing and preserving animal hides. Hide processing involves using sodium chloride to extract water from the hides so they may be preserved and transported offsite. Swift Beef sends both Beef Plant waste streams to the Lone Tree Facility through a six-mile pipeline for treatment and disposal.

22. Next door to the Beef Plant is a lamb slaughterhouse. Swift Beef previously owned the lamb slaughterhouse, but sold it in 2016 to Mountain States Rosen. The lamb plant processes 2,500 animals a day. Its wastewater is combined with the Beef Plant's wastewater before being piped to the Lone Tree Facility for treatment and disposal.

23. The Lone Tree Facility only receives wastewater from the two slaughterhouses. The Lone Tree Facility accepts approximately 3-4 millions gallons of wastewater per day from the two slaughterhouses via the pipeline. The wastewater is treated at the Facility through two side-by-side, identical multi-step processes. First, influent wastewater from the slaughterhouses flows into two anaerobic lagoons. Then, it is pumped into a secondary biological nutrient-activated sludge system consisting of two anoxic basins and two aerobic basins. The next step in the treatment process sends the wastewater into final clarifiers. And last, the wastewater either undergoes chlorination and dechlorination, or, alternatively, it is pumped directly into two holding ponds. The wastewater is usually stored for approximately 30 days in these large ponds before being discharged into Lone Tree Creek.

24. The effluent discharges from the Lone Tree Facility occur pursuant to a Colorado Pollution Discharge Elimination System permit issued by the Water Division. The Water Division issued Swift Beef the current version of the Permit on October 9, 2012 and it went into

effect on December 1, 2012. The Permit expired on November 30, 2017, but remains effective today because the Water Division administratively extended it indefinitely on December 1, 2017.

25. The Permit authorizes Swift Beef to discharge effluent from the Lone Tree Facility to Lone Tree Creek from one pipe, known as the Outfall. The Permit establishes pollution limits for multiple parameters. The Permit's limits vary for some parameters depending on the number of animals slaughtered at the Beef Plant in a particular month. This production variability is reflected in the Permit as Outfall 001, Outfall 002, and Outfall 003. Two days before the beginning of each month, Swift Beef must report to the Water Division the number of animals that will be slaughtered at the Beef Plant so that the Water Division knows which of the Permit's limits and conditions apply for the forthcoming month.

26. The Permit requires Swift Beef to sample effluent discharges to determine compliance with Permit limits. The Permit prescribes sampling rules and frequency. For example, the discharge limits applicable for total ammonia and total suspended solids include both a daily maximum limit and a 30-day average limit. The Permit mandates that Swift Beef report sampling results in Discharge Monitoring Reports, which are submitted to the Water Division and EPA each month. Discharge Monitoring Reports are supposed to be available for the public to review.

27. Before renewing the Permit in 2012, the Water Division identified chronic ammonia violations at the Lone Tree Facility. The Water Division conducted a site visit of the Lone Tree Facility in August 2012 after multiple "upsets" led to significant ammonia-related violations. The Water Division believed the problem stemmed from cleaning products used at the two slaughterhouses and production levels at the Beef Plant.

28. The Permit attempts to address the ammonia problem in three ways. First, the

Permit includes a five-year schedule for implementing an Ammonia Reduction Project. Second, the Water Division imposed a concentration-based effluent limitation, which provides a more stringent standard for ammonia than the prior permit's requirements. Due to the change, Swift Beef was not required to achieve compliance with the Permit's new 30-day average ammonia limits until October 1, 2017. And last, the Permit now includes "chronic," as opposed to lethal, Whole Effluent Toxicity testing and limits to evaluate the sublethal effects of the Lone Tree Facility's effluent.

29. Since Permit issuance, Swift Beef has violated the Permit's limits for total ammonia/nitrogen as well as total suspended solids. The Permit limits daily concentrations of total ammonia to 8 mg/l. Swift Beef exceeded the daily maximum concentration of total ammonia in April 2018, June 2018 ~~and~~, September 2018, January 2020, February 2020, April 2020, and May 2020. The Permit's 30-day average concentration limit for total ammonia varies by month. Swift Beef exceeded the 30-day average concentration limits for total ammonia in June 2018 ~~and~~, September 2018, February 2020, and April 2020. Swift Beef exceeded the daily maximum amount of total suspended solids in January 2016, June 2018, July 2018, and September 2018. Swift Beef exceeded the 30-day average for total suspended solids in July 2018.

30. Whole Effluent Toxicity—or WET—testing is designed to ensure the discharged effluent is not unacceptably toxic to aquatic life. WET tests measure the synergistic toxic effect of multiple pollutants that may individually be less toxic. WET testing measures a test organism's response to effluent: lethal, chronic (defined as impairing growth or reproduction) or no observed effect. The WET tests required by the Permit evaluate the effluent's effect, at different concentrations, on a water flea (*ceriodaphnia dubia*) and a fathead minnow (*pimephales*

*promelas*).

31. The Permit requires Swift Beef to conduct two types of WET testing. One test is known as the 25-percent seven-day inhibition concentration (or IC25) standard. IC25 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 this test, the Permit requires the use of 100 percent effluent—meaning the effluent is not diluted—to reflect Lone Tree Creek’s low flows. The second test is known as NOEC, or “no observed effects concentration,” and determines the highest concentration of discharged effluent that shows no statistically detectable effect on the aquatic organism. The Permit requires that there are no observed effects when exposing the aquatic organisms to 100 percent, pure effluent concentrations. The Permit requires Swift Beef to perform these WET tests and demonstrate compliance with the WET testing limits quarterly.

32. According to the Permit, Swift Beef had to conduct WET testing and report results to the Water Division beginning in the fourth quarter of 2012 through the third quarter of 2013. The Permit began requiring compliance with WET testing limits in the fourth quarter of 2013.

33. Swift Beef reported violations of the Permit’s WET testing limits immediately. In 2013, Swift Beef investigated the cause of these violations. First, Swift Beef performed a Toxicity Reduction Evaluation (TRE) analysis that began on August 18, 2013 and was completed on September 1, 2013. The TRE assessed the waters in Lone Tree Creek and determined how much sodium chloride could be dumped into the Creek before there would be WET violations. The TRE did not evaluate effluent discharged from the Lone Tree Facility. In October 2013, Swift Beef conducted another “accelerated” test. For this test, Swift Beef

segregated the wastewater coming from hide processing at the Beef Plant and stored those wastes in the Lone Tree Facility's holding ponds that are not always used for treatment. Swift Beef then conducted three WET tests on the effluent absent the hide wastewater, resulting in two passes and one failure. After conducting these evaluations, Swift Beef represented to the Water Division that the use of salts (sodium chloride) for hide processing was the cause of repeated WET violations at the Facility.

34. In 2014, the Water Division and Swift Beef discussed the WET violations. In October 2014, Water Division and Swift Beef agreed on a schedule for fixing the WET-testing problem. Swift Beef would develop and install at the Beef Plant a salt evaporation system for recovering and reusing the salts, which would reduce the volume of brine wastewater pumped to the Lone Tree Facility for discharge. The chosen salt evaporation system processes 25,000 gallons of brine wastewater each day. The agreed-upon schedule provided that Swift Beef would have the salt evaporation system operational by December 2015 and that Swift Beef would fully comply with the Permit's WET testing limits by December 2015. From the fourth quarter of 2013 through the end of 2015, Swift Beef violated the WET limits during every quarterly testing and reporting period.

35. Swift Beef purchased and installed the salt evaporator at its Beef Plant in 2015. Swift Beef's salt evaporation system was not operational at the end of 2015. Despite not meeting the deadline agreed upon with the Water Division, Swift Beef continued to send the brine wastewater from its Beef Plant to the Lone Tree Facility in 2016, 2017, and 2018. In every quarter from 2016 through 2018, Swift Beef violated the Permit's WET limits. In the first two quarters of 2020, Swift Beef violated the Permit's WET limits. Upon information and belief, Swift Beef is likely to continue to violate WET testing limits at the Lone Tree Facility.

36. Swift Beef’s salt evaporator involves a combustion process that emits air pollution, including particulate matter, carbon monoxide, volatile organic compounds, and nitrogen oxide. Because of these emissions, Swift Beef had to comply with air pollution laws. In February 2015, Swift Beef submitted an Air Pollutant Emission Notice for the salt evaporator to the State’s Air Pollution Control Division. The filing of an Air Pollutant Emission Notice is a state law requirement that applies when an emission unit at a facility emits two or more tons per year of particulate matter, carbon monoxide, volatile organic compounds, or nitrogen oxide. Concurrently, Swift Beef applied for a modified air construction permit for its Beef Plant because of the salt evaporator’s projected emissions in addition to other emissions at the Beef Plant triggered this air permitting requirement. That air permit was issued in 2015.

37. Swift Beef purchased and installed a “scrubber” for the salt evaporator. The purpose of the scrubber was to reduce air emissions. If emissions from the salt evaporator exceed a certain tonnage-per-year threshold, Swift Beef would need to apply for a “major source” air permit. After initially using smaller-scale scrubbers on the salt evaporator, Swift Beef installed a full-scale scrubber and was able to operate it in December 2017.

38. Swift Beef violated the Permit’s WET testing limits in each quarter of 2018.

39. In July 2018, Swift Beef submitted a modified Air Pollutant Emission Notice and a modified construction permit application to the state. The modified notice and permit application were necessary because of additional and unexpected emissions of particulate matter from operating the salt evaporator. A modified air permit covering the particulate matter emitted from the salt evaporator has not been issued.

40. The Lone Tree Facility cannot treat the salty-brine wastewater generated from hides processing. Some “preliminary” WET testing that Swift Beef performed in 2019 showed

violations of the WET limits.

41. In 2020, Swift Beef again violations WET limits in its CWA Permit. Swift Beef continues to send salty-brine wastewater to the Lone Tree Facility. This wastewater stream is contributing to Swift Beef's 2020 violations of the Permit's WET limits.

## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

(Violations of the Clean Water Act and Permit—Exceeding Whole Effluent Toxicity and Ammonia Limits)

~~420.~~ Each and every allegation contained in the preceding paragraphs of this Complaint is incorporated herein by reference as if fully set forth herein.

~~431.~~ In every quarter from January 2014 through December 2018 and in the first two quarters of 2020, Swift Beef violated WET testing limits in its CWA Permit at the Lone Tree Facility.

~~442.~~ In the first quarter of 2014, Swift Beef released effluent from the Lone Tree Facility that required a 40 percent concentration for satisfying the NOEC WET test and 55.08 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

~~453.~~ In the second quarter of 2014, Swift Beef released effluent from the Lone Tree Facility that required a 60 percent concentration for satisfying the NOEC WET test and 65.28 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

~~464.~~ In the third quarter of 2014, Swift Beef released effluent from the Lone Tree Facility that required a 60 percent concentration for satisfying the NOEC WET test and 80.67 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

475. In the fourth quarter of 2014, Swift Beef released effluent from the Lone Tree Facility that required a 60 percent concentration for satisfying the NOEC WET test and 72.09 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

486. In the first quarter of 2015, Swift Beef released effluent from the Lone Tree Facility that required a 60 percent concentration for satisfying the NOEC WET test and 65.75 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

497. In the second quarter of 2015, Swift Beef released effluent from the Lone Tree Facility that required an 80 percent concentration for satisfying the NOEC WET test and 95.97 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

4850. In the third quarter of 2015, Swift Beef released effluent from the Lone Tree Facility that required an 80 percent concentration for satisfying the NOEC WET test and 90.74 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

4951. In the fourth quarter of 2015, Swift Beef released effluent from the Lone Tree Facility that required an 80 percent concentration for satisfying the NOEC WET test and 94.02 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

520. In the first quarter of 2016, Swift Beef released effluent from the Lone Tree Facility that required an 80 percent concentration for satisfying the NOEC WET test and 79.45 percent concentration for the IC25 WET test. These concentrations were below and violated the

100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

534. In the second quarter of 2016, Swift Beef released effluent from the Lone Tree Facility that required an 80 percent concentration for satisfying the NOEC WET test and 86.00 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

542. In the third quarter of 2016, Swift Beef released effluent from the Lone Tree Facility that required an 80 percent concentration for satisfying the NOEC WET test and 86.46 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

553. In the fourth quarter of 2016, Swift Beef released effluent from the Lone Tree Facility that required a 60 percent concentration for satisfying the NOEC WET test and 67.43 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

564. In the first quarter of 2017, Swift Beef released effluent from the Lone Tree Facility that required an 80 percent concentration for satisfying the NOEC WET test and 79.38 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

575. In the second quarter of 2017, Swift Beef released effluent from the Lone Tree Facility that required a 60 percent concentration for satisfying the NOEC WET test and 69.40 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

586. In the third quarter of 2017, Swift Beef released effluent from the Lone Tree Facility that required a 60 percent concentration for satisfying the NOEC WET test and 64.92

percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

597. In the fourth quarter of 2017, Swift Beef released effluent from the Lone Tree Facility that required an 80 percent concentration for satisfying the NOEC WET test and 84.75 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

6058. In the first quarter of 2018, Swift Beef released effluent from the Lone Tree Facility that required an 80 percent concentration for satisfying the NOEC WET test and 84.26 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

6159. In the second quarter of 2018, Swift Beef released effluent from the Lone Tree Facility that required a 60 percent concentration for satisfying the NOEC WET test and 96.11 concentration (*Pimephales promelas*) percent and 75.37 percent concentration (*Ceriodaphnia dubia*) for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

620. In the third quarter of 2018, Swift Beef released effluent from the Lone Tree Facility that required an 80 percent concentration for satisfying the NOEC WET test and 27.55 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

634. In the fourth quarter of 2018, Swift Beef released effluent from the Lone Tree Facility that required a 60 percent concentration for satisfying the NOEC WET test and 69.03 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

64. In the first quarter of 2020, Swift Beef released effluent from the Lone Tree Facility that required a 20 percent concentration for satisfying the NOEC WET test and 69.03 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

65. In the second quarter of 2020, Swift Beef released effluent from the Lone Tree Facility that failed to satisfy the NOEC WET test and 69.03 percent concentration for the IC25 WET test. These concentrations were below and violated the 100 percent instream-waste-concentration requirement in the Lone Tree Facility Permit.

66. Swift Beef exceeded the daily maximum concentration of total ammonia in April 2018. Swift Beef reported releasing 8.22 mg/l of total ammonia one day in April 2018. Upon information and belief, Swift Beef exceeded the daily maximum concentration of total ammonia on more than one day in April 2018.

67. Swift Beef exceeded the daily maximum concentration of total ammonia in September 2018. Swift Beef reported releasing 14.6 mg/l of total ammonia one day in September 2018. Upon information and belief, Swift Beef exceeded the daily maximum concentration of total ammonia on more than one day in September 2018.

68. Swift Beef exceeded the daily maximum concentration of total ammonia in January 2020. Swift Beef released 14.9 mg/l of total ammonia on January 11, 2020 and 15.3 mg/l of total ammonia on January 12, 2020.

69. Swift Beef exceeded the daily maximum concentration of total ammonia in February 2020. Swift Beef reported releasing 24.9 mg/l of total ammonia one day in February 2020. Upon information and belief, Swift Beef exceeded the daily maximum concentration of total ammonia on February 9 and 10, 2020.

70. Swift Beef exceeded the daily maximum concentration of total ammonia in April 2020. Swift Beef exceeded the daily maximum concentration of total ammonia on April 23, 2020 (9.8 mg/l), April 24, 2020 (9.85 mg/l), April 25, 2020 (8.91), April 26, 2020 (9.52 mg/l), April 27, 2020 (10.2 mg/l), April 28, 2020 (102 mg/l), April 29, 2020 (9.58 mg/l), and April 30, 2020 (11.8 mg/l). Upon information and belief, Swift Beef also exceeded the daily maximum concentration of total ammonia on April 9, 2020.

71. Swift Beef exceeded the daily maximum concentration of total ammonia in May 2020. Swift Beef exceeded the daily maximum concentration of total ammonia on May 1, 2020 (14.9 mg/l) and May 2, 2020 12.4 (mg/l).

72. The Permit limits the 30-day average of total ammonia concentration in the month of June to 2.5 mg/l. Swift Beef exceeded the 30-day average of total ammonia concentration in June 2018. The 30-day average of total ammonia concentration in June 2018 was 6.41 mg/l.

73. The Permit limits the 30-day average of total ammonia concentration in the month of September to 2.1 mg/l. Swift Beef exceeded the 30-day average of total ammonia concentration in September 2018. The 30-day average of total ammonia concentration in September 2018 was 2.91 mg/l.

74. The Permit limits the 30-day average of total ammonia concentration in the month of February to 3.4 mg/l. Swift Beef exceeded the 30-day average of total ammonia concentration in February 2020. The 30-day average of total ammonia concentration in February 2020 was 4.9 mg/l.

75. The Permit limits the 30-day average of total ammonia concentration in the month of April to 3.1 mg/l. Swift Beef exceeded the 30-day average of total ammonia concentration in April 2020. The 30-day average of total ammonia concentration in April 2020 was 5.31 mg/l.

~~762.~~ Accordingly, ~~for five continuous years,~~ Swift Beef has been and is violating the CWA and its Permit's effluent discharge limits for WET testing and ammonia limits. Such discharges constitute violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a), 1342, and the regulations implementing the CWA, 40 C.F.R. § 122.41(a). These violations ~~and,~~ ~~upon information and belief,~~ will continue ~~to do so~~ absent judicial relief. This is an ongoing and continuing violation of the CWA and Permit and enforceable through the CWA's citizen suit provision. *See* 33 U.S.C. § 1365(a)(1), § 1365(f)(6).

~~6377.~~ Each day that Swift Beef has not complied with violates its Permit's ~~the~~ WET ~~testing~~ and ammonia limits is a separate and distinct violation of the CWA and the Permit, within the meaning of the CWA's penalty provisions. Pursuant to §§ 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d) and 1365, Swift Beef is liable for civil penalties for each day of each Permit ~~its violations of the Permit~~. Swift Beef is subject to an injunction under the CWA ordering it to take all actions necessary to cease its WET testing Permit violations.

### **SECOND CLAIM FOR RELIEF**

(Violations of the Clean Water Act and Permit—Failure to comply with Automatic Compliance Response Requirement due to violations of Whole Effluent Toxicity limits)

~~6478.~~ Each and every allegation contained in the preceding paragraphs of this Complaint is incorporated herein by reference as if fully set forth herein.

~~6579.~~ When there are violations of Whole Effluent Toxicity testing limits at the Lone Tree Facility, Part I(B)(3)(c) of the Permit requires Swift Beef to conduct an Automatic Compliance Response: either accelerated testing using the more sensitive species or, alternatively, conduct a Toxicity Identification Evaluation or a Toxicity Reduction Evaluation.

~~6680.~~ As detailed and alleged above, Swift Beef violated Whole Effluent Toxicity testing limits in every quarter from the first quarter of 2014 through the fourth quarter of 2018. Swift Beef did not conduct the Automatic Compliance Response required by the Permit for the

first through fourth quarters of 2014, for the first through fourth quarters of 2015, and for the first and second quarters in 2016. Swift Beef sought a waiver from conducting the Automatic Compliance Response requirement for each of these ten quarters, and the Water Division approved and issued a waiver.

~~67~~81. In the third quarter of 2016, Swift Beef violated Whole Effluent Toxicity limits in the Permit. Swift Beef did not conduct the Automatic Compliance Response required by the Permit for the third quarter of 2016. Swift Beef therefore violated Part I(B)(3)(c) of the Permit.

~~68~~82. In the fourth quarter of 2016, Swift Beef violated Whole Effluent Toxicity limits in the Permit. Swift Beef did not conduct the Automatic Compliance Response required by the Permit for the fourth quarter of 2016. Swift Beef therefore violated Part I(B)(3)(c) of the Permit.

~~69~~83. In the first quarter of 2017, Swift Beef violated Whole Effluent Toxicity limits in the Permit. Swift Beef did not conduct the Automatic Compliance Response required by the Permit for the first quarter of 2017. Swift Beef therefore violated Part I(B)(3)(c) of the Permit.

~~70~~84. In the second quarter of 2017, Swift Beef violated Whole Effluent Toxicity limits in the Permit. Swift Beef did not conduct the Automatic Compliance Response required by the Permit for the second quarter of 2017. Swift Beef therefore violated Part I(B)(3)(c) of the Permit.

~~71~~85. In the third quarter of 2017, Swift Beef violated Whole Effluent Toxicity limits in the Permit. Swift Beef did not conduct the Automatic Compliance Response required by the Permit for the third quarter of 2017. Swift Beef therefore violated Part I(B)(3)(c) of the Permit.

~~72~~86. In the fourth quarter of 2017, Swift Beef violated Whole Effluent Toxicity limits in the Permit. Swift Beef did not conduct the Automatic Compliance Response required by the Permit for the fourth quarter of 2017. Swift Beef therefore violated Part I(B)(3)(c) of the Permit.

7387. In the first quarter of 2018, Swift Beef violated Whole Effluent Toxicity limits in the Permit. Swift Beef did not conduct the Automatic Compliance Response required by the Permit for the first quarter of 2018. Swift Beef therefore violated Part I(B)(3)(c) of the Permit.

7488. In the second quarter of 2018, Swift Beef Beef violated Whole Effluent Toxicity limits in the Permit. Swift Beef did not conduct the Automatic Compliance Response required by the Permit for the second quarter of 2018. Swift Beef therefore violated Part I(B)(3)(c) of the Permit.

7589. In the third quarter of 2018, Swift Beef violated Whole Effluent Toxicity limits in the Permit. Swift Beef did not conduct the Automatic Compliance Response required by the Permit for the third quarter of 2018. Swift Beef therefore violated Part I(B)(3)(c) of the Permit.

7690. In the fourth quarter of 2018, Swift Beef violated Whole Effluent Toxicity limits in the Permit. Swift Beef did not conduct the Automatic Compliance Response required by the Permit for the fourth quarter of 2018. Swift Beef therefore violated Part I(B)(3)(c) of the Permit.

7791. Swift Beef has not conducted an Automatic Compliance Response from the third quarter of 2016 through the fourth quarter of 2018 and did not receive a waiver for these quarters. This is an ongoing and continuing violation of Part I(B)(3)(c) of the Permit and enforceable through the CWA's citizen suit provision. *See* 33 U.S.C. § 1365(a)(1), § 1365(f)(6). Each day that Swift Beef does not perform the additional testing is a separate and distinct violation of the CWA and the Permit, and subjects Swift Beef to civil penalties and injunctive relief.

### **THIRD CLAIM FOR RELIEF**

(Violations of the Clean Water Act and Permit—Noncompliance with Requirement for Submitting Supporting Documents for Whole Effluent Toxicity Testing Results)

7892. Each and every allegation contained in the preceding paragraphs of this Complaint is incorporated herein by reference as if fully set forth herein.

793. Along with the Discharge Monitoring Reports that detail Whole Effluent Toxicity testing results, the Permit in Part I(B)(3)(a) requires Swift Beef to provide the Water Division with laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test, and copies of any chain of custody forms. These documents then become publicly available. Since the Permit became effective on December 1, 2012 and began requiring Swift Beef to comply with Whole Effluent Toxicity testing limits on October 1, 2013, Swift Beef has repeatedly violated the Permit's requirement to provide detailed information about Whole Effluent Toxicity testing at the Lone Tree Facility.

8094. For the first quarter of 2014, Swift Beef did not provide the Water Division with laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test, and copies of any chain of custody forms.

8195. For the second quarter of 2014, Swift Beef did not provide the Water Division with laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test, and copies of any chain of custody forms.

8296. For the third quarter of 2014, Swift Beef did not provide the Water Division with laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test, and copies of any chain of custody forms.

8397. For the fourth quarter of 2014, Swift Beef did not provide the Water Division with laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test, and copies of any chain of custody forms.

8498. For the fourth quarter of 2016, Swift Beef did not provide the Water Division with laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test, and copies of any chain of custody forms.

~~85~~99. For the first quarter of 2017, Swift Beef did not provide the Water Division with laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test, and copies of any chain of custody forms.

~~86~~100. For the third quarter of 2017, Swift Beef did not provide the Water Division with laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test, and copies of any chain of custody forms.

~~87~~101. For the first quarter of 2018, Swift Beef did not provide the Water Division with laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test, and copies of any chain of custody forms.

~~88~~102. For the third quarter of 2018, Swift Beef did not provide the Water Division with laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test, and copies of any chain of custody forms.

~~89~~103. For the fourth quarter of 2018, Swift Beef did not provide the Water Division with laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test, and copies of any chain of custody forms.

~~90~~104. For the quarters identified above, Swift Beef has not subsequently provided the Water Division with laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test, and copies of any chain of custody forms.

~~91~~105. For the quarters identified above, Swift Beef's violation of the Permit, Part I(B)(3)(a), is an ongoing and continuing violation of the CWA and enforceable through the CWA's citizen suit provision. *See* 33 U.S.C. § 1365(a)(1), § 1365(f)(6). Each day that Swift Beef does not submit with laboratory statistical summary sheets, summaries of the determination of a valid, invalid or inconclusive test, and copies of any chain of custody forms is a separate and

distinct violation of the CWA and the Permit, and subjects Swift Beef to civil penalties and injunctive relief.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

1. Declare that Swift Beef has violated and is violating the Clean Water Act and the Permit applicable to the Lone Tree Facility;
2. Issue an injunction prohibiting Swift Beef from violating the Permit's terms and limitations at the Lone Tree Facility and the Clean Water Act in the future, and requiring Swift Beef to take all necessary measures to prevent any future violations of its Permit terms and limitations and the CWA;
3. Determine the number of days of violation committed by Swift Beef and assess civil penalties against Swift Beef as authorized by the Clean Water Act, 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4; 84 Fed. Reg. 2056, 2059 (Feb. 6, 2019);
4. Order Swift Beef to pay Plaintiffs' litigation costs, including reasonable attorneys' fees and expert witness fees, 33 U.S.C. § 1365; and
5. Provide such other relief as the court deems just and proper.

Respectfully submitted,

Dated: ~~May~~ September 23, 2020~~19~~

/s/ Neil Levine  
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# Exhibit 1



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).

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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

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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.*

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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.

## Sixty-Day Notice Letter: Swift Beef Company-JBS USA

January 31, 2019

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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

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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

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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

## Sixty-Day Notice Letter: Swift Beef Company-JBS USA

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– 06/30/2018		day IC25 ( <i>Pimephales promelas</i> )				
		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> )				
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> )				
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> )				
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> )				
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> )				
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				

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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	

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		( <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

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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

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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.

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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

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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:

Neil Levine  
Justin Connor  
Public Justice  
4404 Alcott Street  
Denver, Colorado 80211  
(303) 455-0604  
nlevine@publicjustice.org

Hannah Connor  
Center for Biological Diversity  
P.O. Box 2155  
St. Petersburg, Florida 33731  
(202) 681-1676  
hconnor@biologicaldiversity.org

Tarah Heinzen  
Food & Water Watch  
2009 NE Alberta St. Ste. 207  
Portland, OR 97211  
(202) 683-2457  
theinzen@fwwatch.org

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

\*\*\*

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

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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:

Acting Administrator Andrew Wheeler  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., NW  
Mail Code 1101A  
Washington, D.C. 20460

Regional Administrator Douglas Benevento  
Environmental Protection Agency Region 8  
1595 Wynkoop Street  
Mail Code 8RA  
Denver, CO 80202-1129

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U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Karin McGowan  
Interim Director  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, CO 80246

Corporation Services Co.  
Registered Agent for Swift Beef Company  
1900 W. Littleton Blvd.  
Littleton, CO 80120

Corporation Services Co.  
Registered Agent for JBS USA  
1560 Broadway, Ste. 2090  
Denver, CO 80202

# Exhibit 2



July 24, 2020

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Swift Beef Company  
Lone Tree Wastewater Treatment Plant  
1770 Promontory Circle  
Greeley, CO 80634

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

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

Through undersigned counsel, the Noticing Parties—Center for Biological Diversity and Food & Water Watch—provide Swift Beef Company and JBS USA (collectively, Swift Beef) with this supplemental notice of intent to sue concerning Clean Water Act (CWA) violations at your Lone Tree Wastewater Treatment Plant.

On January 31, 2019, these same Noticing Parties sent their 60-day notice letter to Swift Beef identifying multiple violations of the CWA permit (Permit No. CO0027707) applicable to the Lone Tree Wastewater Treatment Plant and your effluent discharges. That notice letter is attached and fully incorporated into this supplemental notice.

Recently obtained information reveals new and additional CWA violations as a result of effluent discharged from your Lone Tree Wastewater Treatment Plant. This supplemental notice informs Swift Beef that—sixty days from the date of this letter—the Center for Biological Diversity and Food & Water Watch intend to amend their existing district court lawsuit against Swift Beef to include violations of Whole Effluent Toxicity (WET) and ammonia limits in your CWA permit.

**VIOLATIONS OF THE CLEAN WATER ACT**

A. WET Limit Violations

The Permit requires Swift Beef to conduct two types of WET testing. One test is known as the 25-percent seven-day inhibition concentration (IC25) standard. IC25 identifies the effluent concentration at which no more than 25 percent of the test organisms experience

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reproduction or growth inhibition after seven days of exposure. The second test is known as NOEC, or “no observed effects concentration,” and determines the highest concentration of discharged effluent that shows no statistically detectable effect on the aquatic organism. For both tests, the Permit requires the use of 100 percent pure effluent—meaning the effluent is not diluted—to account Lone Tree Creek’s low or intermittent flows. WET testing measures the response of a water flea (*ceriodaphnia dubia*) and a fathead minnow (*pimephales promelas*) when exposed to effluent discharged from the Lone Tree Wastewater Treatment Plant.

In the first quarter of 2020, Swift Beef discharged effluent from the Lone Tree Wastewater Treatment Plant (Outfall 001x) that required dilution to a 20-percent concentration to satisfy the NOEC test endpoint (for *ceriodaphnia dubia*) and 17.33-percent concentration to satisfy the IC25 test endpoint (for *ceriodaphnia dubia*). These concentrations were below the 100 percent instream-waste-concentration requirement in the CWA Permit. Violating these WET limits is a violation of your CWA Permit and the CWA.

In the second quarter of 2020, Swift Beef discharged effluent from the Lone Tree Wastewater Treatment Plant (Outfall 001x) that required a 60-percent concentration to satisfy the NOEC test endpoint (for *ceriodaphnia dubia*) and 73.05-percent concentration to satisfy the IC25 test endpoint (for *ceriodaphnia dubia*). These concentrations were below the 100 percent instream-waste-concentration requirement in the CWA Permit. Violating these WET limits is a violation of your CWA Permit and the CWA.

Further, Swift Beef discharged effluent from the Lone Tree Wastewater Treatment Plant (Outfall 001x) in a manner that violated the WET limit for the fathead minnow (*pimephales promelas*): Swift Beef discharged effluent that required a 80-percent concentration in order to satisfy the NOEC test endpoint in the first quarter of 2020 and a 20-percent concentration in the second quarter of 2020. These concentrations were below the 100 percent instream-waste-concentration requirement in the CWA Permit. Violating these WET limits is a violation of your CWA Permit and the CWA.

#### B. Ammonia, Daily and 30-day Average

Swift Beef’s effluent discharges from the Outfall at the Lone Tree Wastewater Treatment Plant violated the daily limit for total ammonia (8 mg/l) as follows:

- Swift Beef exceeded the daily maximum concentration of total ammonia on January 12, 2020 (14.9 mg/l) and on January 12, 2020 (15.3 mg/l).
- Swift Beef exceeded the daily maximum concentration of total ammonia on February 9 and 10, 2020 (24.9 mg/l on one day in February).
- Swift Beef exceeded the daily maximum concentration of total ammonia on April 23, 2020 (9.8 mg/l), April 24, 2020 (9.85 mg/l), April 25, 2020 (8.91 mg/l), April 26, 2020 (9.52 mg/l), April 27, 2020 (10.2 mg/l), April 28, 2020 (10.2 mg/l), April 29,

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2020 (9.58 mg/l), and April 30, 2020 (11.8 mg/l).

- Swift Beef exceeded the daily maximum concentration of total ammonia on May 1, 2020 (14.9 mg/l) and May 2, 2020 (12.4 mg/l).

Swift Beef's effluent discharges from the Outfall at the Lone Tree Wastewater Treatment Plant violated the monthly average for total ammonia as follows:

- The Permit limits the 30-day average of total ammonia concentration in the month of February to 3.4 mg/l. The 30-day average of total ammonia concentration in February 2020 was 4.9 mg/l.
- The Permit limits the 30-day average of total ammonia concentration in the month of April to 3.1 mg/l. The 30-day average of total ammonia concentration in April 2020 was 5.31 mg/l.

### **PARTIES GIVING NOTICE**

The Noticing Parties' contact information is as follows:

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

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

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

Neil Levine  
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Hannah Connor  
Center for Biological Diversity

Supplemental Sixty-Day Notice Letter  
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Page 4 of 5

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theinzen@fwwatch.org

### **RELIEF REQUESTED**

The Noticing Parties will seek declaratory and injunctive relief, civil penalties, and all other relief authorized by law for these violations.

\*\*\*

Center for Biological Diversity and Food & Water Watch believe that the data and information contained in this letter provide Swift Beef with sufficient information about the alleged violations and the ability to come into compliance with the CWA and CWA permit. They intend to file a new or amended citizen suit under the CWA, 33 U.S.C. § 1365(a), against Swift Beef 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 Lone Tree Wastewater Treatment Plant and the alleged violations correctly or wish to discuss effective remedies for the violations noted in this letter.

Thank you.

Supplemental Sixty-Day Notice Letter  
July 24, 2020  
Page 5 of 5

Sincerely,

*/s/ Neil Levine*

Neil Levine  
Public Justice

Hannah Connor  
Center for Biological Diversity

Tarah Heinzen  
Food & Water Watch

cc:

Administrator Andrew Wheeler  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., NW  
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Washington, D.C. 20460

Regional Administrator Gregory Sopkin  
Environmental Protection Agency Region 8  
1595 Wynkoop Street  
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U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Jill Hunsacker Ryan  
Executive Director  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, CO 80246

Corporation Service Co.  
Registered Agent  
1900 West Littleton Blvd.  
Littleton, Colorado 80120