IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SIERRA CLUB IOWA CHAPTER, Petitioner, and THE IOWA STATE COUNCIL OF TROUT UNLIMITED, Petitioner-Intervenor, vs. IOWA DEPARTMENT OF NATURAL RESOURCES, Respondent and SUPREME BEEF LLC, Indispensable Party.	Case No. CVCV062713 RULING ON MOTION TO STRIKE AND PETITION FOR JUDICIAL REVIEW

INTRODUCTION

Before the Court is a Petition for Judicial Review originally filed by the Sierra Club Iowa Chapter (Sierra Club) on October 27, 2021, against the Iowa Department of Natural Resources (IDNR), respondent, and Supreme Beef LLC, indispensable party (Supreme Beef). On January 6, 2022, the Iowa State Council of Trout Unlimited (Trout Unlimited) filed a petition to intervene, which was granted on January 25, 2022. On November 15, 2022, Sierra Club filed its brief. Both IDNR and Supreme Beef filed their briefs on December 15, 2022, and Trout Unlimited and Sierra Club filed individual replies on December 29, 2022. IDNR, pursuant to Iowa Rule of Civil Procedure 1.434, filed a motion to strike on January 12, 2023; Supreme Beef joined this motion to strike on January 13, 2023. Oral arguments were heard on February 16, 2023. A hearing on the motions was held before the Court on February 16, 2023. Taylor Wallace appeared for the

Petitioners and David Steward appeared for the Respondent. The Court now enters the following ruling on the Motion to Strike and Petition for Judicial Review.

FACTUAL & PROCEDURAL BACKGROUND

In 2017, Mike, Dean, and Jared Walz (hereinafter "the Walzes") formed the juridical entity Supreme Beef. *Sierra Club Iowa Chapter v. Iowa Dep't of Nat. Res.*, CVCV062713, Supreme Beef, Br., *6 (Polk Cnty. Dist. Ct., Dec. 15, 2022). Supreme Beef and another company, Feeder Creek, were to be members of Walz Energy LLC ("Walz Energy"). *Id.*; *Sierra Club Iowa Chapter v. Iowa Dep't of Nat. Res.*, CVCV062713, IDNR Br., *6 (Polk Cnty. Dist. Ct., Dec. 15, 2022). Walz Energy was created to own and operate a cattle feedlot in Monona, Clayton County, Iowa with an anaerobic digester, which was going to turn the cattle waste into methane gas. *Sierra Club Iowa Chapter v. Iowa Dep't of Nat. Res.*, CVCV062713, Sierra Club Br., *5 (Polk Cnty. Dist. Ct., Dec. 15, 2022); *Sierra Club*, CVCV062713, IDNR Br. at 6; *Sierra Club Iowa Chapter v. Iowa Dep't of Nat. Res*., CVCV062713, Pet'r's App. Vol 1 *5-7 (Polk Cnty. Dist. Ct., Nov. 15, 2022). The specific plans involved a manure flushing system that moved the manure to a round tank. From there the manure would be pumped to the digester where microbial life would digest the manure releasing methane gas in an environment lacking oxygen, hence anaerobic. *Sierra Club*, CVCV062713, IDNR Br. at 7; *See Sierra Club*, CVCV062713, IDNR Br. at 6, fn. 1 (describing the process of anerobic digestion). Additional waste products, not from the open feedlot, would be added to the digester as well. Once the microbial life had finished, the manure would be pumped into an earthen storage basin. *Sierra Club*, CVCV062713, IDNR Br. at 7; *Sierra Club*, CVCV062713, Pet'r's App. Vol. 1 at 5-7.

Under Iowa code section 459A.205(4)(a) and Iowa Administrative Code (IAC) section 65.105(1)(a), construction permits are required prior to building an open feedlot effluent basin or

alternative technology system if the feedlot is required to get a National Pollutant Discharge Elimination System ("NPDES") permit. An NPDES permit is only required when the effluent basin is going to discharge effluent. Effluent is liquid waste or sewage. Discharge in this context means the effluent is released directly into the United States waterways.

In this case, the basin was not going to discharge any effluent; instead, it was going to contain all of the effluent from the open feedlot until it was land-applied. This meant that the earth basin would be an anaerobic lagoon. *Sierra Club*, CVCV062713, IDNR Br. at 9. Since the earth storage basin was not discharging, it did not need a NPDES permit. *Sierra Club*, CVCV062713, Pet'r's App. Vol. 1 at 6; *Sierra Club Iowa Chapter v. Iowa Dep't of Nat. Res.*, CVCV062713, Resp't's App. *68 (Polk Cnty. Dist. Ct., Nov. 15, 2022).

Due to the nature of the proposed digester, IDNR concluded that the various waste sources entering the digester would produce industrial waste; therefore, Walz Energy should apply for a construction permit. *Sierra Club*, CVCV062713, Pet'r's App. Vol. 1 at 12-13; *Sierra Club*, CVCV062713, Resp't's App. at 29, 68, 77-79. Additionally, the wastewater storage would need to comply with the regulations governing wastewater facilities. *Sierra Club*, CVCV062713, Pet'r's App. Vol. 1 at 20, 27 (stating that once it was determined only wastewater was going to go into the lagoon, the lagoon was treated as an industrial wastewater management system). Walz Energy submitted the requisite construction permit. *Id.* at 8-10. The original construction permit was approved in September 2017 and described the waste storage as a waste water anaerobic lagoon. *Id.* at 42. The permit also included two feet of compacted clay and a drain tile placed two feet below the bottom of the lagoon. *Id.* The original plan was to collect the wastewater from the digester into the anaerobic lagoon and then land-apply it according to the requirements of IAC Chapter 21. *Id.* at 24. This construction permit was updated in March 2019 as a precautionary

measure due to public pressure. *Sierra Club*, CVCV062713, Supreme Beef, LLC Br. at 10. The new construction permit now included a synthetic liner on top of the two feet of clay liner for the earthen wastewater anaerobic lagoon. *Sierra Club*, CVCV062713, Resp't's App. at 114-115.

Additionally, the surrounding geographic area of the feedlot contains karst bedrock. Karst formations contain limestone and dolomite, which allows surface water to rapidly flow into the bedrock and into the groundwater sources. *Sierra Club*, CVCV062713, IDNR Br. at 8 n. 3. When a wastewater lagoon is built in karst or suspected karst formations, they must include a synthetic liner. Iowa Wastewater Facilities Design Standards, Wastewater Treatment Ponds § 18C.3.6.1 (1987). Furthermore, a lagoon cannot be built in karst terrain that exhibits features like sink holes or solution channeling. *Id*. In confinement operations, anaerobic lagoons are not allowed to be constructed in karst terrain. Iowa Code § 459.308(3). Industrial waste facilities must have ten feet of separation between the bottom of the pond and the bedrock formation. Wastewater Treatment Ponds § 18C.3.6.1 (1987). Since the general area of the feedlot location had karst terrain, IDNR had two in-house geologists review the original geological report that was submitted to IDNR. *Sierra Club*, CVCV062713, Pet'r's App. Vol. 1 at 25. Both of the geologists said that the plans were in compliance with the ten-foot regulation. *Id.*

Unfortunately, the best laid plans often go awry, as the plans for the digester never came to fruition. The managers of the operation converted $308,309.25 from Supreme Beef. *Sierra Club*, CVCV062713, Supreme Beef, LLC Br. at 6 n. 3. The construction funds ran out, and the project was in a mess. In April 2019, the Walzes initiated a lawsuit to dissociate the managers, Heath Kellogg and Jon Haman, and their Feeder Creek Company from Walz Energy. *Sierra Club*, CVCV062713, Supreme Beef, LLC Br. at 6. The court appointed Jared Walz the receiver of Walz Energy in May 2019. *Id.* The case ended when the court dissociated Feeder Creek Company from

Walz Energy making it the only member of Walz Energy. *Id.* at 6-7. In the wake of this litigation, the Walzes had a large debt burden and a partially-built cattle facility without an anerobic digestor. To make the facility operational, the Walzes needed to put millions of dollars into additions and remediations. *Id.* at 6-7; *Sierra Club*, CVCV062713, IDNR Br. at 7. Due to the mismanagement the digester proposal was put on hold. *Sierra Club*, CVCV062713, Sierra Club Br. at 7.

It was after the second construction permit was granted in March 2019 that Supreme Beef began to construct six new buildings to house 11,600 cattle as opposed to the original 10,000 proposed cattle. *Id.*; *Sierra Club*, CVCV062713, IDNR Br. at 9. Supreme Beef also built the manure storage basin. *Id.* During the construction, dynamite was used to break up some of the bedrock to lay the tile lines. *Id.*; *Sierra Club*, CVCV062713, Sierra Club Br. at 18. To get the necessary financing to complete the project, Supreme Beef needed a Nutrient Management Plan (NMP). *Sierra Club*, CVCV062713, Supreme Beef, LLC Br. at 7. An NMP is also required by Iowa Code section 459A.201(3)(b)(2). In this application, the manure type was listed as a "storage basin effluent," matching the language of open feedlot requirements. *Sierra Club*, CVCV062713, Sierra Club Br. at 7. Supreme Beef contracted with Becky Sexton to prepare and submit the NMP for 11,600 cattle. *Sierra Club*, CVCV062713, IDNR Br. at 10; *Sierra Club*, CVCV062713, Supreme Beef, LLC Br. at 7-8. IDNR Environmental Specialist Senior Brian Jergenson reviewed the NMP on behalf of IDNR. *Sierra Club*, CVCV062713, IDNR Br. at 10. Jergenson requested assistance from IDNR Environmental Specialist Senior Jeremy Klatt to help review the nitrogen and phosphorous index calculations for accuracy. *Id.* Mr. Klatt become concerned that the nitrogen and phosphorus index calculations were incorrect, because Supreme Beef appeared to be taking credit for terraces on land that was not fully terraced. *Id.* at 11. Sierra Club member Steve Veysey also submitted public comments pointing out deficiencies in the plan. *Sierra Club Iowa Chapter*

v. Iowa Dep't of Nat. Res., CVCV062713, Sierra Club Pet., *2 ¶ 5 (Polk Cnty. Dist. Ct., Oct. 27, 2021); *Sierra Club*, CVCV062713, Sierra Club Br. at 8. This NMP for 11,600 cattle was initially going to be denied by IDNR over these concerns; however, after discussions with IDNR, it was determined that Supreme Beef could withdraw this application for 11,600 cattle. Supreme Beef could then submit another NMP for 2700 cattle. This was suggested by IDNR Director Kayla Lyons after a phone call with State Senator Dan Zumbach, Jared Walz' father-in-law. *Id.* at 8; *Sierra Club*, CVCV062713, Pet'r's App. Vol. 2 at 5. Supreme Beef submitted the new NMP for 2700 cattle in October 2020. In February 2021, Supreme Beef filed the final NMP for the remaining number of cattle.

In this NMP, Ms. Sexton removed credits for terraces and other land conservation practices. *Sierra Club*, CVCV062713, IDNR Br. at 11. Ms. Sexton also obtained a manure sample from Upper Iowa Beef ("UIB") to calculate the estimated nutrient values. *Id.* The IDNR claims that UIB is an open feedlot like Supreme Beef. *Id.* However, UIB is a cattle-slaughtering operation, not a feedlot. *Sierra Club*, CVCV062713, Sierra Club Br. at 24; *Sierra Club*, CVCV062713, Pet'r's App. Vol. 1 at 88. IDNR published the NMP on February 1, 2021, for public comment. The Sierra Club, Iowa Environmental Council, Mr. Veysey, and Larry Stone, another Sierra Club member, all submitted comments challenging the NMP. *Sierra Club*, CVCV062713, Sierra Club Br. at 9. Additionally, a public hearing was requested on the NMP, which was held on March 1, 2021. In response to the public comments, IDNR requested Supreme Beef clarify aspects of the NMP. *Sierra Club*, CVCV062713, Pet'r's App. Vol. 61, 65; *Sierra Club*, CVCV062713, IDNR Br. at 12. IDNR also rejected three fields identified in the NMP for effluent application. *Id.* at 12. On April 2, 2021, IDNR completed its review of the Supreme Beef NMP; it found the NMP complied with NMP regulations and issued a letter approving the NMP. *Id.*

On October 27, 2021, Sierra Club filed this petition. IDNR filed a motion to dismiss on November 22, 2021, which was joined by Supreme Beef on November 23, 2021. Sierra Club resisted the motion to dismiss on December 2, 2021, and provided further resistance on December 17, 2021. On January 6, 2022, Trout Unlimited filed a petition for intervention, which was granted on January 25, 2022 by the court. IDNR filed a motion to dismiss Trout Unlimited's petition for intervention arguing that Trout Unlimited did not provide timely service, which was also joined by Beef Supreme on February 15, 2022. Trout Unlimited filed their resistance on February 25, 2022. The court dismissed the motion against Trout Unlimited on March 25, 2022, and gave the respondents ten days to respond to Trout Unlimited's petition for judicial review.

On April 4, 2022, Sierra Club filed a motion to provide evidence in addition to what IDNR submits as the administrative record. Sierra Club was requesting the ability to conduct discovery from IDNR and Supreme Beef. This request for additional evidence would require IDNR and Supreme Beef to identify the persons and documents that pertain to the decision-making process and the ultimate decision to approve the NMP; Sierra Club also wanted to include additional expert testimony. IDNR and Supreme Beef both resisted this motion on April 13, 2022. Sierra Club replied on April 18, 2022. The court granted the ability to conduct discovery, but denied the request for expert testimony on April 28, 2022. On May 18, 2022, a discovery plan was submitted to the court.

Discovery proceeded apace until August 19, 2022, when Sierra Club filed a motion to compel Counsel for IDNR and Supreme Beef to allow Sierra Club to depose Jared Walz, the managing owner of Supreme Beef. Sierra Club added additional reasons to grant the motion to compel on August 29, 2022, after more information was garnered from deposing Ms. Sexton, the consultant hired by Supreme Beef to submit the application for the NMPs. IDNR and Supreme

Beef resisted this motion to compel on August 29, 2022. The court granted this motion to compel on September 17, 2022.

On November 15, 2022, Sierra Club submitted its brief for judicial review. On December 15, 2022, IDNR and Supreme Beef submitted their response briefs. Sierra Club submitted its reply on December 29, 2022, and Trout Unlimited submitted its brief as well. Finally, on January 12, 2023, IDNR submitted a motion to strike. IDNR argued that through its supplemental appendix, filed with its final reply brief, Sierra Club was attempting to improperly interject expert witness testimony, photographs without evidentiary foundation, and an email document containing inadmissible hearsay. Sierra Club resisted this motion to strike on January 15, 2023. All the matters at issue in this case were heard before the court on January 20, 2023.

STANDARD

In judicial review, district courts act in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co.*, 649 N.W.2d 744, 748 (Iowa 2002). The standard by which a district court can find an agency committed an error of law depends on whether the agency has been vested by the legislature with the power to interpret the law or the power to apply the law to the facts. Regardless of what standard applies, the Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs the scope of the Court's review in this case. Furthermore, under both standards, a court may modify, reverse, affirm, remand to the agency for further proceedings, or grant other appropriate relief if the substantial rights of the person seeking the relief have been prejudiced and the agency action falls underneath any enumerated actions listed in Iowa Code section 17A.19(10)(a)-(n). A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a).

If the agency has not been vested with the power to interpret the law or apply the law to the facts, then the party challenging the agency action must show the action was: ultra vires; legally erroneous; unsupported by substantial evidence in the record; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See Id.*; Iowa Code § 17A.19(10). "If the claim of error lies with the agency's findings of fact, the proper question on review is whether substantial evidence supports those findings of fact" when the record is viewed as a whole. *Brewbaker v. State Bd. Of Regents*, 843 N.W.2d 466, 471 (Iowa Ct. App. 2013). Substantial evidence is defined as evidence of the quality and quantity "that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1). Additionally, if the interpretation of the law is not vested with the agency, then the court may reverse the agency if it is an erroneous interpretation. Iowa Code § 17A.19(10)(c).

If the interpretation of the law has been clearly vested with the agency, then the standard is whether the interpretation is irrational, illogical, or wholly unjustifiable. Iowa Code § 17A.19(10)(l). Additionally, if the application of the law to the facts has been vested in the discretion of the agency, then the district court can only modify or reverse the agency decision if they find that the application was irrational, illogical, or wholly unjustifiable. Iowa Code section 17A.19 (10)(m).

When a court examines whether an agency has been vested by the legislature to interpret or apply the law, they are required to consider the "precise language of the statute, its context, the purpose of the statute, and the practical considerations involved." *Mosher v. Dept. of Inspections and Appeals, Health Facilities Div.*, 671 N.W.2d 501, 509 (Iowa 2003). In deciding whether an interpretation of a statute or the application of a law to the facts has been vested by a provision of

a law in an agency's discretion, we give no deference to the agency's view. Iowa Code § 17A.19(11)(a); *Iowa Ass'n of Sch. Bds. v. Iowa Dept. of Educ.*, 739 N.W.2d 303, 307 (Iowa 2007). An agency is vested with the power to interpret the law and apply the law to the facts when, after our independent review and judgment, we have a firm conviction that the legislature intended to delegate these powers to the agency. *Iowa Ass'n of Sch. Bds.,* 739 N.W.2d at 307 (citing Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government* 63 (1998)).

Chapter 459A grants a general authority to the Environmental Protection Commission to establish requirements relating to the construction, expansion, and/or operation of open feedlot operations and any related open feedlot operation structures. Iowa Code § 459A.104(1). It further states that the purpose of the chapter is for providing the requirements related to the construction, expansion, and operation of open feedlot operations and the control of open feedlot effluent. *Id.* § 459A.104(3).

Chapter 459A requires an NMP as a part of an open feedlot construction or expansion. *Id.* § 459A.201(3)(b). The Environmental Protection Commission is authorized to create regulations that govern the approval of NMPs. *Id.* § 459A.104(1). Rule 567 I.A.C. 65.112 dictates the requirements of an NMP. However, 567 I.A.C. 65.112 largely mirrors Iowa Code section 459A.208, and does not specify when the DNR is to approve or disapprove an NMP.

IDNR argues that sections 459A.201 and 485.208(5) gives it broad discretion. It is true that section 459A.201 requires IDNR to approve or disapprove an NMP in sixty days, and section 485.208(5) allows the IDNR to seek public comment on whether to approve an NMP. This gives IDNR broad discretion with the statutes and regulations to approve or disapprove an NMP. This is bolstered by the fact that section 459A.208(7)(a)(1) grants the IDNR the power to set

requirements for the level of nitrogen use for optimum crop yields according to a crop schedule specified in the NMP. Furthermore, there are practical reasons for the legislature to want to vest the IDNR with the power to interpret and apply the law to the facts in an NMP. *See Iowa Ass'n of School Boards*, 739 N.W.2d at 307-08 (discussing the practicalities of vesting the Iowa Department of Education with the power to interpret the law regulating complex school financing). The management and land application of effluent is complex and highly technical. It is reasonable to conclude that the Iowa legislature intended to give broad discretion to the IDNR to enforce chapter 459A.

This Court finds that the interpretation and application of the statute regarding NMPs has been vested with IDNR due to the following reasons: 1) the broad delegation of power in chapter 459A; 2) the limited instructions for when or how to approve NMPs; 3) the highly technical nature of NMPs; and 4) the fact that IDNR was delegated powers to determine the appropriate amount of nitrogen concentration for field applications in NMPs. However, the Iowa legislature's delegation to IDNR is not as broad as IDNR claims. Section 459A.201 requires specific criteria to be in the NMP. At minimum this creates a bottom standard for NMP approval. This means it is grounds to find an interpretation or application of the law as illogical if an NMP failed to contain required information and IDNR approved it.

Finally, since this Court is sitting in appellate review, we have "no original authority to declare the rights of parties or the applicability of any statute or rule." *Black v. Univ. of Iowa*, 362 N.W.2d 459, 462 (Iowa 1985). The petition that brought this matter before the Court was IDNR's approval of the February 2021 NMP; therefore, reversing the IDNR's decision requires this court to find that the approval of the NMP was irrational, illogical, or wholly unjustifiable. *Campbell v. Iowa Beer & Liquor Control Dep't*, 366 N.W.2d 574, 575 (Iowa 1985). In making this

determination, the Court may review the record as a whole. Iowa Code §§ 17A.19(8)(a), 17A.19(10).

ANALYSIS

I. Motion to Strike

IDNR filed a motion to strike evidence included in Sierra Club's supplemental appendix. A judicial review is governed by the Iowa Administrative Procedure Act, Iowa Code Chapter 17A. If it does not speak on an issue, then the Iowa Rules of Civil Procedure apply. Iowa Rules of Civ. Pro. R. 1.1601. IDNR brought this motion to strike under Iowa Rules of Civ. Pro. R. 1.434. This rule states that "improper or unnecessary matter in a pleading may be stricken out on a motion of the adverse party." Iowa Rules of Civ. Pro. R. 1.401 defines what qualifies as a pleading. *State v. LePon*, No. 18-0777, 2019 WL 2369887, *14 (Iowa Ct. App. June 5, 2019). Briefs are not included in this definition. Iowa Rules of Civ. Pro. R. 1.401. Neither the Iowa Rules of Civil Procedure nor chapter 17A directly addresses whether a party may bring a motion to strike evidence in a judicial review. However, under Iowa Code section 17A.19(7) a court may "hear and consider such evidence as it deems appropriate." Generally, courts do not handle motions to strike in the judicial review process. District courts are only reviewing the agency record. This is especially the case for contested cases, where courts do not hear any further evidence than what is in the agency record. Iowa Code §17A.19(7). In our case the agency record was underdeveloped, so it was appropriate to allow discovery. Allowing additional evidence is limited, however, in two major regards. This power cannot be used to become a trial of factual issue de novo in the district court. *Medco Behav. Corp. of Iowa v. State Dep't of Hum. Servs.*, 553 N.W.2d 556, 562 (Iowa 1996). The additional evidence also cannot be used to show that the agency's action was unsupported by

substantial evidence produced before the agency. *Krause v. State ex rel. Iowa Dep't of Hum. Res.*, 426 N.W.2d 161, 165 fn.1 (Iowa 1988).

The rules of civil procedure and Chapter 17A are not clear on the ability to strike evidence in a judicial reviews and district courts may hear and consider evidence they deem appropriate; therefore, this court will review IDNRs motion to strike as to whether it is appropriate to consider the evidence that IDNR wishes to strike from the record. IDNR first argues that Sierra Club's supplemental appendix contains expert testimony from Professor E. Calvin Alexander, Jr. and Steve Veysey. In this Court's original order on the motion to present additional evidence, we noted our hesitancy to introduce expert testimony because it might turn this review into a trial de novo of factual issues. *Sierra Club Iowa Chapter v. Iowa Dep't of Nat. Res.*, CVCV062713, Ruling on Mot. to Present Additional Evid., * 2 (Polk Cnty. Dist. Ct., Apr. 28, 2022). We qualified this exclusion by noting the day could come where expert testimony may be appropriate. *Id.* at 3.

An expert is someone who has knowledge, skill, experience, training, or education. Iowa Rules of Evid. R. 5.702. Expert testimony entails scientific, technical, or otherwise specialized knowledge. *Id.* Professor Alexander clearly has specialized knowledge and qualifies as an expert in issues of karst terrain. However, the main concern this court had was whether expert testimony would result in a trial de novo of factual issues. In this case, both parties agree that the location of the feedlot is in karst terrain. *Sierra Club*, CVCV062713, IDNR Br. at 8; *Sierra Club Iowa Chapter v. Iowa Dep't of Nat. Res.*, CVCV062713, Sierra Club Resistance to Mot. to Strike *3 (Polk Cnty. Dist. Ct., Jan. 15, 2023). Since this evidence does not create a de novo trial over whether the terrain the feedlot is in karst terrain, this Court will not strike this evidence.

Steve Veysey's statement discussing the manure analysis is expert testimony. Sierra Club claims that Veysey's analysis is not expert testimony because Veysey just took the figures and did

the math, and Veysey provides analysis explaining the figures and math. This analysis is based on expert knowledge, skill, experience, training or education. Furthermore, an expert provides testimony based on their expert knowledge and skill to explain the evidence to the trier of fact. Iowa Rules of Evid. R. 5.702. Veysey's statements are explaining the evidence to the trier of fact. This is expert testimony. However, the court will not strike this testimony because Veysey is responding to evidence that should have been produced when Sierra Club requested it. *Sierra Club*, CVCV062713, Sierra Club Resistance to Mot. to Strike at 3. Further, this analysis mirrors prior analyses, which have already been provided by Veysey in other appendices. *Sierra Club*, CVCV062713, Pet'r's App. Vol. 1 at 163.

The photos of the ephemeral gullies and the email will not be stricken from the record. IDNR argues that the photos provided in the supplemental appendix "have no *original or authentic* identifying information allowing the viewer to know what is being viewed or how the photograph has any relevance to the present action." *Sierra Club Iowa Chapter v. Iowa Dep't of Nat. Res.*, CVCV062713, IDNR Mot. to Strike, *3 (Polk Cnty. Dist. Ct., Jan. 12, 2022). The photos very clearly come from the Clayton County Assessor and the lot numbers for the specific parcel are shown in most of the photos. *Sierra Club Iowa Chapter v. Iowa Dep't of Nat. Res.*, CVCV062713, Sierra Club Suppl. App., *70-74 (Polk Cnty. Dist. Ct., Dec. 29, 2022). For the ones where the lot number is not shown, one could easily determine the identification of the farmland by utilizing the lot numbers shown in the adjacent lots. The photos show ephemeral gullies, which is an issue in this case. On these grounds, the court concludes that the evidence is founded and relevant.

Additionally, the stricter rules of evidence do not apply to cthis case. *Brewbaker*, 843 N.W.2d at 473. Unlike this case, *Brewbaker* was a contested case, and it relied on Iowa Code section 17A.14. The court reviewed an agency decision where the agency utilized evidence that

would not be admissible in a jury trial. The question was whether the agency was able to use the evidence in their decision under 17A.14, not whether the court could admit the evidence under Iowa Code section 17A.19(7). Section 17A.14 provides laxer evidence requirements for contested cases. *See* Iowa Code § 17A.14(1) ("A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial"). While this statement does not explicitly state that it is only applicable to agencies developing their records, it likely only intends for an agency to develop the record in a contested case. The section is explicitly discussing agency procedure for contested cases, and there is no mention of judicial review in section 17A.14(1). *See* Iowa Code § 17A.19. Under section 17A.19(7) district courts cannot hear any further evidence with respect to issues that the constitution or statute designates to an agency to determine.

While section 17A.14 may not apply to this case, other factors show that standard evidence rules do not apply to other agency action. A court sitting in judicial review of a contested case would be able to review evidence that ordinarily is not admissible before a jury trial. Courts are not told to ignore evidence in the agency record that does not meet the normal standards of evidence. There is nothing in chapter 17A that states there is a different evidence standard for when a court is in judicial review of other agency actions. Furthermore, 17A.19(7) states that the court may hear and consider such evidence as it deems appropriate. These factors support applying the same standard of evidence to both contested and non-contested cases. Applying this to the motion to strike, the court finds that both the photos of the ephemeral gullies and the email are admissible.

II. Judicial Review of NMP

A major contention in this case is that IDNR did not apply the appropriate statutes and regulations to Supreme Beef and its operation. Reviewing these contentions allows the Court to analyze the record as well as to provide the context to the NMP in question. The first issue that needs to be addressed is whether Supreme Beef's operation is a confinement operation or an open feedlot operation. Determining this issue first will delineate whether IDNR has illogically interpreted and applied the statutes and regulations. Sierra Club contends that Supreme Beef's operation is more closely related to a confinement operation. *Sierra Club*, CVCV062713, Sierra Club Br. at 41-42. IDNR says that the operation has always been an open feedlot operation. *Sierra Club*, CVCV062713, IDNR Br. at 9. Supreme Beef's operation is more accurately described as a partially roofed animal feeding operation, which is "an animal feeding operation in which the animals have unrestricted access from any attached roofed structure and the square footage of the unroofed area is at least 10 percent of the square footage of any attached roofed area." Iowa Admin. Code r. 567-65.100(1). A partially roofed animal feeding operation is defined in the same section governing open feedlot operations. When IDNR argued in its brief that Supreme Beef's operation is an open feedlot operation, it was relying on subrule 65.100(1). *Sierra Club*, CVCV062713, IDNR Br. at 9. As long as Supreme Beef's operation complies with the ten percent requirement under the partially roofed animal feeding operation definition, then the operation may be considered an open feedlot operation. This analysis is bolstered by the fact that there is no comparative definition in the regulations for confinement operations. Thus, a partially roofed operation that is compliant with the ten percent rule must be treated as an open feedlot operation. All the evidence on the record directs this court to conclude that the operation is compliant with this definition and is therefore an open feedlot operation. *Sierra Club*, CVCV062713, Resp't's App. At 27-28; 53.

The categorization of the operation determines what kind of manure storage structure may be built. Supreme Beef received a permit from the IDNR to construct an anaerobic lagoon on September 29, 2017. *Sierra Club*, CVCV062713, Pet'r's App. Vol. 1 at 42. An anaerobic lagoon is an unformed manure storage structure that receives manure on a regular basis in such a way as to create anaerobic biological activity. Iowa Code § 459.102(3). A lagoon is specifically defined so as not to be a settled open feedlot effluent basin as defined by section 459A.102, which governs open feedlot operations. *Id.* § 459.102(3)(a). Notably, when asked what type of manure handling system Supreme Beef proposed in its February 2021 NMP, IDNR stated that the proposed manure storage basin was an unformed earthen basin. *Sierra Club*, CVCV062713, Pet'r's App. Vol 2 at 156; *Sierra Club*, CVCV062713, Sierra Club Br. at 15. There is no defined term in chapter 459A or the related regulations for an unformed earthen storage basin. However, there is a designated definition of an earthen manure storage basin in Chapter 459. An earthen manure storage basin is an earthen cavity, covered or uncovered, which "on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are completely removed at least once each year." Iowa Code § 459.102(27); Iowa Admin. Code r. 567-65.1(1). The only reference to an earthen manure storage basin in the IDNR regulations deals with confinement feeding operations. Iowa Admin. Code r. 567-65.1-65.22. Additionally, the definition of unformed manure structures distinguishes between anaerobic lagoons and earthen manure storage basins. Iowa Code § 459.102 (59) ("a covered or uncovered impoundment used to store manure . . . which includes an anaerobic lagoon, aerobic structure, or earthen manure storage basin"). The fact that the definition for unformed manure storage structures distinguishes between the two structures suggests that a lagoon cannot be considered an earthen manure storage basin. Regardless of this issue, the IDNR treats Supreme Beef as having a lagoon elsewhere. *Sierra Club*, CVCV062713,

IDNR Br. at 9, 18, 21; *Sierra Club*, CVCV062713, Pet'r's App. Vol 1 at 42. Finally, Iowa Code Chapter 459A, which governs open feedlot operations, does not mention an anaerobic lagoon.

On these facts, it appears that IDNR has misapplied the law. However, an open feedlot may use a settled open feedlot effluent basin, alternative technology approved by the IDNR, or "any other open feedlot effluent control structure or practice approved by the department." Iowa Code § 459A.401(b); Iowa Admin. Code r. 567-65.101(3). IDNR does not claim that the anaerobic lagoon is an alternative technology; rather IDNR emphasizes the any other structure or practice language to approve the use of the anaerobic lagoon because the anaerobic lagoon goes "above and beyond DNR requirements" for open feedlots. *Sierra Club*, CVCV062713, IDNR Br. at 18.

This does not end our analysis. Section 459A.102(29) defines an open feedlot operation structure as an "open feedlot, settled open feedlot effluent basin, a solids settling facility, or an alternative technology system." Section 459A.102(29) also explicitly excludes manure storage structures from its definition. Anaerobic lagoons are unformed manure structures, which are included in the definition of manure storage structures. Iowa Code §§ 459.102(3), 459.102(41). Anaerobic lagoons cannot be open feedlot operation structures, but there is no set definition for open feedlot effluent control structure or practice in chapter 459A or the IDNR regulations. Manure is "animal excreta or other commonly associate wastes of animals. . ." 459.102(40). Under IDNR regulations open feedlot effluent is a combination of "manure, precipitation-induced runoff, or other runoff before its settleable solids have been removed." Iowa Admin. Code r. 567-65.100(1). Under these definitions, a lagoon could be an open feedlot effluent control structure while simultaneously not qualifying as an open feedlot operation structure.

Legally, it is not an illogical interpretation or application of the law to allow the anaerobic lagoon to be built. 459A.401(b) allows the IDNR to approve any effluent control structure. It seems

odd, however, to utilize an anaerobic lagoon for the effluent control structure because both parties agree Supreme Beef's feedlot operation is in karst terrain. *Sierra Club*, CVCV062713, Resp't's App. at 10, 14-20; *Sierra Club*, CVCV062713, IDNR Br. at 20. Anaerobic lagoons cannot be constructed in karst terrain if it is a part of a confinement operation. Iowa Admin. Code r. 567-65.15(8)(a). This restriction does not apply to open feedlots. *Sierra Club*, CVCV062713, IDNR Br. at 21. Presumably the anaerobic lagoon is not allowed in karst terrain for confinement operations because it is unsafe due to the porous nature of karst. The only way an anaerobic lagoon may be built for an open feedlot operation is if the IDNR approves it. It is odd to approve a manure storage system that is banned from confinement operations due to the danger of spills and leaks into the porous bedrock. To approve it for an open feedlot in the same terrain is particularly odd when the only way this type of manure handling system gets built is if the agency approves it.

Another oddity with this basin is the depth requirement for it in karst terrain. IDNR regulations mandating the depth between the basin and the bedrock in karst terrain only applies if the manure storage structure requires an NPDES permit under Iowa Code section 459A.205. IDNR regulations governing the depth in karst terrain only apply to settled effluent basins subject to the permit requirement in 459A.205. Iowa Code Admin. 567-65.109. The subrule 567 I.A.C. 65.109(4) stipulates the twenty-five-foot difference between the bottom of the basin and the karst terrain. There are two reasons why the twenty-five-foot separation does not apply to this case. First, the regulations only pertain to settled open feedlot effluent basins. As stated above, lagoons are not settled open feedlot effluent basins. Second, even if the manure storage system was a settled open feedlot effluent basin, it is not discharging, which means it does not need the NPDES permit, so the twenty-five-foot depth requirement does not apply to it.

The IDNR did, however, require a separation of at least ten feet between the bottom of the anaerobic lagoon and the bedrock. This is because originally the anaerobic lagoon was going to receive wastewater from the open feedlot and other waste products. This was deemed industrial waste by the IDNR, which meant that the basin needed to comply with industrial wastewater requirements under Iowa Chapter 18C. According to all the evidence on record, the basin complies with the appropriate core samples and is within the ten-foot separation. *Sierra Club*, CVCV062713, Pet'r's App. Vol. 1 at 25. Although the blasting for the tile lines indicates that there is bedrock near the lagoon, it is quite plausible the bedrock beneath the lagoon is within the ten-foot separation requirement. If this is the case, the lagoon is still compliant with IDNR regulations and Iowa statutes. The decision to treat the lagoon as receiving industrial waste water is a logical decision given the digester component of the operation.

This situation is still odd albeit not illogical. The lagoon is allowed because the IDNR approved it for the open feedlot operation, but it would not be allowed if the feedlot were confined. Since the lagoon is not a settled open feedlot effluent basin and it is not discharging, the regulations requiring the twenty-five-foot separation do not apply. The only reason there is any protection between the bottom of the lagoon and the bedrock is due to the industrial waste water requirements. If there had been no digester in the original plans, even this protection in porous bedrock would not be required. The only reason this lagoon avoided so many regulations is because IDNR permitted it.

This brings us to the NMP in question. In its brief, Sierra Club reviews the prior two NMPs and the issues with them before addressing the NMP at the heart of this case. *Sierra Club*, CVCV062713, Sierra Club Br. at 20-22. IDNR describes this discussion as a red herring. *Sierra Club*, CVCV062713, IDNR Br. at 23. The references to prior NMPs are relevant to this Court

insofar as they are a part of the complete record and help the court evaluate the NMP in question and whether the IDNR's approval of the NMP was illogical.

A major contention regarding the nutrient levels of the effluent and manure in the 2021 NMP is that the numbers for the 2021 NMP nutrient values were obtained from UIB, which is a slaughtering operation. *Sierra Club*, CVCV062713, Pet'r's App. Vol. 1 at 88. Sierra Club argues that UIB is not a similar facility to Supreme Beef, and even if it was similar facility, there is no basis to use a sample from a similar facility in the regulations and statutes. *Sierra Club*, CVCV062713, Sierra Club Br. at 24. Subrule 65.112(8) governs what must be included in an NMP for open feedlots. Sierra Club notes that there is no explicit statement in the rules governing open feedlots allowing the use of samples from similar operations. *Sierra Club*, CVCV062713, Sierra Club Br. at 24. Subrule 65.112(8) only says that the NMP must contain the nutrient concentration of the effluent.

IDNR argues they had the authority to use a sample from UIB, because subrule 65.112(8)(a)(2) states that calculations for the land area required for the application of manure, process waste water, and open feedlot effluent based on nitrogen and phosphorus use levels are made according to requirements in subrule 65.17(4). Subrule 65.17(4) governs confinement operations. Subrule 65.17(4) only states that the number of acres for manure application shall be determined by the requirements of subrule 65.17(17), and if there are points for additional separation, the separation must be maintained throughout the life of the plan. Iowa Admin. Code r. 567-65.17(4)(a) & (b). IDNR uses subrule 65.17(4) to get to subrule 65.17(5), which allows them to use other credible sources for standard values. Iowa Admin. Code r. 567-65.17(5). However, subrule 65.17(4) only requires that the number of acres for the manure application be determined as required by rule 65.17(17). Neither subrule 65.17(4) nor 65.17(17) direct one to use

65.17(5). Utilizing subrule 65.17(5) to allow the UIB sample is an illogical interpretation of the statute and an illogical application of the statute to the facts. Subrule 65.112 governs the operation of manure management plans for open feedlot operations; it directs us to a specific subrule in the confinement feedlot operation regulations that leads us to another specific regulation governing confinement operations. We are not directed to use subrule 65.17(5), and therefore, we cannot use 65.17(5). This means that use of UIB's manure sample was incorrect even though samples from other open feedlot operations and a more recent sample from Supreme Beef had similar concentrations as the UIB sample. *Sierra Club*, CVCV062713, IDNR Br. at 25; *Sierra Club*, CVCV062713, Resp't's App. at 22; *Sierra Club*, CVCV062713, Pet'r's App. Vol. 1 at 16 table 1.

Subrule 65.112(8)(d) requires an estimate of the manure, process wastewater, and open feedlot effluent volume or weight. In the February 2021 NMP, Supreme Beef used the concentration values from a manure sample obtained from UIB, but they used a table value for an estimation of the volume. *Sierra Club*, CVCV062713, Sierra Club Br. at 28. The regulations only require that an estimate or actual value be used for the volume and weight. Iowa Admin. Code r. 567 65.112(8)(d). Therefore, it is not an illogical interpretation of the regulations to combine the concentration value from a sample with a table estimation value for volume or weight. Sierra Club argues that "it is never correct to estimate nutrient amounts by multiplying a 'concentration' number from a scenario by a volume number from a different scenario." *Id.* Presumably, if Supreme Beef had a concentration value from their operation but not an accurate volume number, they could use the values in the table as a volume estimation. It may not be as accurate as an estimation derived directly from the operation, but it would be sufficient for the NMP. Therefore, the mixed sources of actual sample and a table value is not illogical, but the incorrect usage of the UIB sample combined with the table estimate is an illogical application of the law.

Additionally, the issue of the number used to estimate the volume of manure produced is whether Supreme Beef's operation deals with finishing cattle or mature cattle. Finishing cattle generally produce less manure per day than mature cattle. In the last two NMPs, Supreme Beef was utilizing table values for mature cattle. *Sierra Club*, CVCV062713, Pet'r's App. Vol. 1 at 118; *Sierra Club*, CVCV062713, Pet'r's App. Vol. 2 at 8. The switch from the mature cattle manure volume table estimate to the finishing value after two failed NMPs barely registered for IDNR staff, who either thought Supreme Beef already was a feedlot for finishing cattle rather than mature cattle, or assumed the operation changed between the prior NMPs and the February 2021 NMP. *Sierra Club*, CVCV062713, Pet'r's App. Vol. 1 at 179-180. IDNR does not address this issue in their brief. However, Jared Walz, in his deposition, stated that the operation was for finishing cattle. *Sierra Club*, CVCV062713, Pet'r's App. Vol. 2 at 189. Walz goes on to distinguish between a finishing cow and a mature cow. Both cows will go to slaughtering once they are done at a feedlot, but some operations will take older (mature) cows and fatten them up more before sending them to be slaughtered. *Id.* Ms. Sexton was a third party hired to fill out the NMPs. It is reasonable to assume that Ms. Sexton was told the feedlot was a finishing operation. Using that information, it is reasonable for Ms. Sexton to use the average weight finishing cattle table value in the NMP. Additionally, Supreme Beef noted that the February NMP was approved nine months prior to there being any cattle at the operation. *Sierra Club*, CVCV062713, Supreme Beef, LLC Br. at 8. Therefore, the prior two NMPs also did not have actual cattle to derive an average weight for to get a table value estimate for the manure volume. The difference is strange, and IDNR's limited reaction to the change is strange. However, given that Ms. Sexton prepared this NMP and the lack of actual volume numbers or actual cattle weight, it is not illogical to use the lower table estimation. Nor is it illogical for IDNR to accept that value.

The next two issues deal with conservation practices and soil erosion estimations used in the February 2021 NMP. The first issue is the relationship between calculations in RUSLE2 and the NMP. Regulation 567 I.A.C. 65.112 (8)(e)(7) requires that site-specific conservation practices be implemented to control runoff of pollutants into the waters of the United States. Sierra Club cites to 567 I.A.C. 65.17(10) to argue that the NMP must also set forth methods by which it will reduce soil loss and potential surface water pollution, but this subrule only pertains to confinement operations, not open feedlot operations.

Next Sierra Club argues the RUSLE2 was done incorrectly. RUSLE2 calculations are utilized to control runoff of pollutants into the waters of the United States. In the February 2021 NMP, some conservation practices were removed from the RUSLE2 calculations. Sierra Club points to the missing conservation practices as evidence that the calculations for how much manure may be field applied is incorrect. However, Sierra Club misunderstands the relationship between RUSLE2 and commercial fertilizer in the NMP. RUSLE2 is concerned with the current tillage practices for the application of the commercial fertilizer. *Sierra Club*, CVCV062713, Resp't's App. at 97-98. The NMP's reference to commercial fertilizer is only concerned with if the farmer applies effluent from Supreme Beef to the field. The number in the NMP is the upper limit of commercial fertilizer that can be used in addition to the effluent and manure. *Sierra Club*, CVCV062713, IDNR Br. at 55, 97-98. Sierra Club's contention that IDNR incorrectly evaluated the amount of manure that can be applied to reduce soil loss is incorrect and based on a misunderstanding of the relationship between RUSLE2 and the NMP. Therefore, the IDNR's interpretation of regulations and evaluations of the RUSLE2 calculations in the February 2021 NMP was not illogical.

The other issue involving erosion is the calculation of ephemeral gully erosion. Manure application rates must be calculated in conjunction with the Iowa Phosphorus Index. Iowa Admin. Code r. 567-65.17(17). This index is specified by the NRCS Iowa Technical Note 25. Note 25 provides the way to calculate the estimates of gross erosion of the soil. It does this by calculating the rill and interrill erosion and the ephemeral gully erosion. Ephemeral gully erosion is determined by the "Gully Erosion procedures outlined in section I-C-3 of the Field Office Technical Guide" of the USDA. Natural Resources Conservation Service, Iowa Technical Note 25, 3 (2004). IDNR relied on photos of the ephemeral gullies rather than using the gully erosion procedures *Sierra Club*, CVCV062713, IDNR Br. at 27. The IDNR does not point to any statute or regulation that allows for determining gully erosion from photos. Furthermore, IDNR has stated that a determination of ephemeral gully erosion is unnecessary if at the time of the NMP application, the gully is not visible. *Sierra Club*, CVCV062713, Pet'r's App. Vol. 2. at 71. IDNR has not indicated what statute or regulation allows an applicant to not calculate ephemeral gully erosion if it is not present at the time of the NMP application. Determining the rate of ephemeral gully erosion from photos may be as effective as the gully erosion procedure outlined in section I-C-3 as IDNR claims, but this Court could find no statute or regulation that allows the use of photos to determine gully erosion. We must therefore conclude this is an illogical interpretation of the law and application of the law to the facts.

The final NMP issue involves missing information. Supreme Beef did not provide any information under the section titled "Storage Structure Operation and Maintenance." *Sierra Club Iowa Chapter v. Iowa Dep't of Nat. Res.*, CVCV062713, Supreme Beef, App. Vol. 1, *16 (Polk Cnty. Dist. Ct., Dec. 15, 2022), In this section, the information required is the "procedures to operate and maintain storage structure to hold all wastes accumulated during the storage period,

the direct precipitation and runoff from a 25-year, 24 hour storm, including visual inspections, as appropriate." Section 459A.208 lists the NMP requirements. Section 459A.208(e) requires information that shows adequate storage for open feedlot effluent. As stated above, IDNR has broad discretion when it comes to interpreting and applying the law involving open feedlots and NMPs. This discretion is limited by requirements that all NMPs must include. Section 459A.208(e) requires information related to the adequate storage for open feedlot effluent. This information was not included, and therefore, it was illogical for IDNR to approve the NMP.

The last issue Sierra Club brought to the attention of the Court is whether the anaerobic lagoon is illegally constructed in a floodway. It goes beyond the jurisdiction of this court to determine whether the lagoon is in a floodplain and the subsequent results if it is in a floodplain. The court merely addresses this issue as a part of the record as a whole to put the 2021 NMP in its appropriate context. Sierra Club relies on Iowa Code section 455B.275. Chapter 455B specifically deals with the jurisdiction of IDNR; it is not speaking directly to open feedlot operations. Section 455B.275 discusses prohibited acts and deals with the powers of the commission and executive director to deal with those acts. The structure of this section is a general rule governing structures in or on floodways or floodplains that the IDNR regulations carve themselves out from. For example, regulation 65.109(6) allows the construction of open feedlot operation structures in a floodplain or within a floodway of a river or stream, but the operator may be required to obtain permits and to provide protection from floodwaters. Chapter 71 of 567 I.A.C. provides the guidelines for when approval is required.

The carve out for open feedlot operations likely does not apply to the anaerobic lagoon. These regulations deal with open feedlot operation structures. Section 459A.102(29) excludes manure storage structures from the definition of an open feedlot operation structure, and an

anaerobic lagoon is specifically described as a manure storage structure. Iowa Code § 459.102(3). It should also be noted that anaerobic lagoons specifically state that they are not settled open feedlot effluent basins, which would be an open feedlot operation structure. *Id.* IDNR regulations also state that anaerobic lagoons cannot include a "settled open feedlot effluent basin which collects and stores *only* precipitation-induced runoff from an open feedlot operation." [emphasis added] Iowa Admin. Code r. 567-65.1(1). This regulation could suggest that an anaerobic lagoon could qualify as a settled open feedlot effluent basin if the basin received run-off from other locations. However, the anaerobic lagoon in question still contradicts the nature of a *settled* effluent basin. Settled effluent is "a combination of manure, precipitation-induced runoff . . . after its settleable solids have been removed." Iowa Code § 459A.102(33). Supreme Beef is not removing the settleable solids before pumping the effluent into the lagoon, so the anerobic lagoon cannot be a *settled* effluent basin regardless if it receives run-off from other sources than precipitation. *Sierra Club*, CVCV062713, Sierra Club Br. at 7. This interpretation of the regulation matches the blanket ban language in the statute. Iowa Code § 459.102(3).

IDNR did qualify the anaerobic lagoon as an open feedlot effluent control structure under section 459A.401(b). As argued above, it is possible for a structure to qualify as an open feedlot effluent control structure while still not qualifying as an open feedlot operation structure. This means that the lagoon is not an open feedlot operation structure, so it is not covered by the exception for open feedlot operation structures in floodways or floodplains. IDNR's interpretation of the rules on this issue is illogical; therefore the lagoon is not in the carve out for open feedlot operation structures in floodplains. Whether the lagoon is in a floodway or floodplain goes beyond the jurisdiction of this Court and should only be analyzed in the appropriate venue.

The review of the record in this case has been extensive in order to get the full picture of IDNR interpretation of the statutes and regulations governing NMPs and the application of the law to evaluating and approving NMPs. The record as a whole shows a mixture of competent technical interpretation of the statutes and applications of the law to Supreme Beef's operation, as well as some illogical interpretations of the statutes. The mixture of logical and illogical interpretation and application appears in the NMP in question as well. IDNR illogically used the manure sample from UIB; IDNR illogically combined the UIB source with the table volume value; and IDNR illogically interpreted the law and applied the law to the analysis of ephemeral gully erosion. Additionally, the February 2021 NMP lacked necessary information about adequate effluent storage; however, IDNR did logically interpret and then evaluate the RUSLE2 calculations and properly distinguished between the RUSLE2 and the NMP. The IDNR's analysis of the first two NMPs shows a knowledgeable and technical analysis of the NMPs that correctly resulted in rejecting them, and its interpretation of statutes allowing the anaerobic lagoon to be an open feedlot effluent control structure was also logical. While the record is a mixture of good interpretation and application of the law, the NMP in question is overwhelming marked with illogical interpretations and applications. For these reasons the Court reverse's IDNR's approval of the February 2021 NMP and remand it back to IDNR for further proceedings in compliance with this ruling.

ORDER

IT IS THEREFORE ORDERED, and for all the reasons stated herein, Petitioner's request to reverse the IDNR action to approve the Supreme Beef NMP is GRANTED and the case is REMANDED back to the IDNR.

So Ordered.

State of Iowa Courts

Case Number	**Case Title**
CVCV062713	SIERRA CLUB IOWA CHAPTER VS IOWA DNR ET AL
Type:	ORDER FOR JUDGMENT

So Ordered

Scott D. Rosenberg

Scott D. Rosenberg, District Court Judge, Fifth Judicial District of Iowa

Electronically signed on 2023-04-28 13:24:00