



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

JUN 27 2012

The Honorable Todd Akin  
U.S. House of Representatives  
Washington, DC 20515

OFFICE OF  
THE REGIONAL ADMINISTRATOR

Dear Congressman Akin:

Thank you for your June 7, 2012, letter to Administrator Lisa Jackson about the Environmental Protection Agency Region 7's use of piloted aircraft to reduce water-quality impacts caused by discharges of untreated manure, litter or process wastewater from concentrated animal feeding operations. I appreciate your concern and I welcome the opportunity to explain the EPA's use of aerial over-flights as one of the many tools that are used as part of the compliance assurance process to identify discharging sources that may impact water quality.

The EPA has not used "drones" or unmanned aircraft for enforcement or compliance investigations. The EPA is authorized to investigate and enforce U.S. environmental laws and uses a variety of sources of information in carrying out its important mission to protect human health and the environment including aerial over-flights, state records, historic information such as census maps and data, the internet and other publicly available sources of information, as well as non-public information such as citizen tips and complaints. The EPA's investigations of potential violations of environmental laws typically involve business operations, including farms and other agricultural enterprises, and not private residences. The Clean Water Act clearly maintains the EPA's oversight authority to ensure compliance with the law and to take enforcement action, as necessary and appropriate.

The EPA Region 7 uses aircraft as a cost-effective tool to help the Agency and our state partners, effectively identify the most significant areas of concern and focus on-site inspections of CAFOs where problems are most likely to exist. On the ground inspections at livestock and poultry operations can cost up to \$10,000 or more per inspection, which is why the EPA uses over-flights, which generally cost between \$1000 and \$2500, to identify possible compliance issues at animal feedlots.

The enclosure includes numbered responses to the questions in your June 7, 2012, letter. Your interest in a practice used by a wide variety of government agencies provides a welcome opportunity to improve public understanding of the EPA's work with federal and state partners, as well as with the regulated community, to protect Missouri's vital waters.

Again, thank you for your letter. If we can be of any further assistance, please feel free to contact me at 913-551-7006, or your staff may call LaTonya Sanders, Congressional Liaison, at 913-551-7555.

Sincerely,  
A handwritten signature in black ink, appearing to read "Karl Brooks".

Karl Brooks

Enclosure



## **Enclosure/EPA responses to inquiry from Congressman Todd Akin**

### ***Q1. What statutory authority is the EPA relying on to conduct aerial surveillance inspections?***

The EPA's governing statutes provide general and specific authority for the agency to conduct investigations, collect information, require reporting, perform monitoring, conduct inspections, and take other actions necessary to ensure our nation's environment is protected from unlawful pollution. The Clean Water Act clearly maintains EPA's oversight authority to ensure compliance with the law and to take enforcement action, as necessary and appropriate.

The Supreme Court considered the matter of EPA's authority to conduct aerial assessments in *Dow Chemical v. U.S.*, 476 US 227 (1986), stating:

Congress has vested in EPA certain investigatory and enforcement authority, without spelling out precisely how this authority was to be exercised in all the myriad circumstances that might arise in monitoring matters related to clean air and water standards. When Congress invests an agency with enforcement and investigatory authority, it is not necessary to identify explicitly each and every technique that may be used in the course of executing the statutory mission. Regulatory and enforcement authority generally carries with it all modes of inquiry and investigation traditionally employed or useful to execute the authority granted.

### ***Q2. How many targeted aerial flight operations, if any, have taken place in Missouri?***

EPA Region 7 has not performed any flights in Missouri.

### ***Q3. Have these operations been restricted to aerial surveillance of cattle feed operations? Are other agricultural operations included in the aerial surveillance?***

The EPA Region 7 flights are not limited to just cattle feedlots. Operations that are photographed during these flights can include many different types of livestock and poultry operations subject to regulation under the Clean Water Act.

### ***Q4. Are more flights planned and what criterion is used to decide appropriate areas of surveillance?***

The EPA Region 7 currently has no flights scheduled in Missouri. For the remainder of the federal fiscal year 2012, Region 7 intends to perform additional flights in Nebraska and in Iowa. The EPA Region 7 plans on continuing to use the flights beyond FFY 2012. However, those flights have not yet been scheduled.

The EPA Region 7's process for identifying where it will fly involves looking at areas that contain high concentrations of large and medium sized animal feeding operations and/or watersheds where the state has identified impaired rivers and streams. When looking at impaired waters, the EPA Region 7 focuses on waters where the causes of the impairment could be attributed to animal feeding operations (i.e., ammonia, bacteria, fish kills, low dissolved oxygen, etc.). Once an area is identified, we then plan a flight path that will allow for us to cover as many large and medium sized facilities as possible.

### ***Q5. When did the EPA begin conducting such aerial surveillance?***

Flights to assess animal feeding operations in Region 7 did not begin until March 2010.

***Q6. While the Region 7 office has stated publically that such surveillance is cost effective, what is the cost to the American taxpayer for such surveillance?***

EPA's Water Enforcement Division entered into an Interagency Agreement with the Department of Interior, National Business Center, Aviation Management Directorate in 2006 to conduct over-flights to examine various potential water pollution problems throughout the country. Since 2006, the EPA has spent approximately \$90,000 under this interagency agreement. Information on the DOI aviation program and the services it provides is available on the DOI website at: <http://amd.nbc.gov>, which includes information on the list of approved service providers. The EPA identifies service providers who have the aircraft and other equipment needed for a particular over-flight. The EPA then identifies the most cost-effective option from the identified service providers. In addition to the DOI agreement, some EPA regions may have arranged for over-flights using various agreements or funding mechanisms.

Costs of aerial overflights conducted through the EPA Water Enforcement Division's Interagency Agreement with DOI generally average between \$1000 and \$2500 for one to two days of flights. Multiple flights over several days are more costly. Costs vary depending upon the number of days and hours of the flights, cost of fuel, the area of the country involved, the time of year, and the availability of a plane and pilot that meets the EPA's needs.

***Q7. Have studies taken place to assess the cost-benefit of these flights?***

The EPA has found overflights to be a very cost-effective screening tool to evaluate numerous facilities over a large geographic area and identify a subset of those facilities with apparent illegal discharges of pollution that may warrant a follow-up site inspection. A comprehensive site inspection at livestock and poultry operations can cost up to \$10,000 or more. This screening method allows the EPA to focus its limited inspection resources on those facilities that are posing the greatest risks to human health and the environment.

***Q8. At what elevation are these flights operated when images are recorded?***

With the exception of take off and landings, the typical altitude for the EPA Region 7 flights is between 1,200 and 1,500 feet above the surface.

***Q9. How many enforcement actions have taken place against Missouri agricultural operations resulting from aerial surveillance?*** None.

***Q10. Are Missouri local or state authorities notified prior to surveillance being initiated?***

No local or state authorities have been notified in Missouri because the EPA Region 7 has not performed any flights in the State. However, it is standard practice to notify the state environmental agency prior to the EPA Region 7 performing a flight.

***Q11. Do these aerial surveillance flights disrupt operations or livestock?***

Given the altitudes at which flights occur, the EPA Region 7 does not believe they cause any disruptions to the livestock operations. When flights were initiated in 2010, EPA Region 7 was mindful that this could be a concern for producers. As a result, the EPA Region 7 personnel conducting the flights have been vigilant in their observations of the animals' behavior as they fly over an operation and have observed no significant change during the brief period they are near an operation. Moreover, to date the EPA Region 7 has not received any complaints or concerns from livestock owners related to animal stress or noise.



**Q12. Do you consult with the Missouri Department of Natural Resource (DNR) at any point during these flights or during the enforcement process?**

Since there have been no flights in Missouri, the EPA Region 7 has not consulted with MDNR regarding the flights. It is common practice, however, for the EPA Region 7 to coordinate extensively with the MDNR regarding the Region's compliance and enforcement activities in Missouri.

**Q13. Are images of non-farm businesses or residences ever photographed that are not subject to regulation under the Clean Water Act or other applicable federal law?**

The elevation (above 1,200 feet) at which the EPA Region 7 flights occur make it impossible to eliminate all areas outside the animal feeding operation from being photographed. Moreover, the angle sometimes necessary to assess an operation (the plane rarely flies directly over the facility because the operation is viewed through a cockpit window) is such that the images are taken from an angle that may capture some land and buildings beyond the facility. Images taken from the ground would have a similar tendency to capture land and buildings on the horizon. However, like images taken on the ground and since the EPA is seeking the greatest clarity and detail possible in every image, every effort is made to ensure that the sole subject of every photo is the production or land application areas of an animal feeding operation. Also like photos taken from the ground, the images may unintentionally capture areas that are not subject to CWA regulation.

**Q14. Are the images made public at any time?**

As part of the EPA Regions 7's meeting with IDNR and the Iowa Cattlemen's Association in May 2010, a select number of images from Iowa were shared with IDNR and ICA staff as part the EPA's presentation on its findings. The EPA Region 7 has included portions of images from Nebraska as part of a presentation presented at an EPA Region 7 nonpoint source and source water protection program meeting in June 2011. This presentation was made available to the public. The EPA Region 7 used images from Iowa as part of its presentations at both meetings hosted by ISU's Iowa Beef Center in October 2010 and October 2011. The presentation was not provided to the participants, however it was attended by USDA officials.

As part of the EPA Region 7's March 2012 outreach meeting in West Point, Nebraska, Region 7 staff used a Power Point presentation that contained portions of images that were associated with animal feeding operations in Nebraska. This presentation was made available to the public. It is important to note that when the EPA Region 7 uses images for educational purposes it modifies the image to only include the specific issue or practice it seeks to highlight. The EPA Region 7 never reveals the facility name or includes other identifying information in its presentations.

**Q15. How long does the EPA retain them and who maintains them?**

The EPA Region 7 maintains these images pursuant to the EPA Record Schedules 207 and 211. Schedule 207 applies to enforcement action files and includes all administrative, judicial and landmark cases. Retention timeframes for schedule 207 are summarized below:

<b>Enforcement Type</b>	<b>Retention Time</b>
Administrative Cases	10 years after settlement or closure of case.
Judicial Cases	20 years after settlement or closure of case.
Landmark Cases	Permanent record. Transferred to national archives after 20 years.

The EPA Records Schedule 211 applies to compliance and enforcement files not associated with the enforcement action types discussed above and are to be kept for five years after file closure by the EPA.

In Region 7, the images are maintained by the Water Enforcement Branch of the Water Wetlands and Pesticides Division in conjunction with the EPA Region 7 Records Center.

***Q16. If the photographic images are not used in an enforcement action, for how long do the images remain on file?***

Pursuant to the EPA Record Schedule 211, compliance and enforcement files not associated with the enforcement action types discussed in Q15 are to be kept for five years after file closure by the EPA.

***Q17. How are they disposed of once the images are no longer needed?***

Disposal of images is performed pursuant to the same EPA record schedules identified in question 15.

***Q18. Are any of these images shared or distributed to other federal or state agencies other than the State of Missouri?***

See response to question 14.

***Q19. Does the EPA anticipate it will share the images?***

In some instances the EPA Region 7 will provide copies of images to a state environmental agency. The EPA Region 7 also includes photographs in subsequent inspection reports if it is determined an on-the-ground inspection is warranted. Images that support an Agency enforcement action might be shared with the Department of Justice, judges, or others involved in the adjudication process.

***Q20. Are the images subject to release under the Freedom of Information Act?***

As Agency records, these images are subject to the Freedom of Information Act. Whether the images would be released under FOIA or determined to be exempt from mandatory disclosure will be determined on a case specific basis. For example, the EPA would consider whether portions of the images that inadvertently contain personal residences or pictures of individuals qualify for withholding under Exemption 6 of FOIA (personal privacy). Applicability of this and other exemptions, or of other statutes, will be determined on a case by case basis.