October 6, 2015

Via email and certified mail

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RE: Request for Clean Air Act 42 U.S.C. § 7413 Enforcement Actions Against Hickman Family Farms and Hickman's Egg Ranch, Inc. of Tonopah, Arizona and Hickman's Egg Ranch of Arlington, Arizona

Dear Administrator Blumenfeld and Division Directors:

This letter serves as a formal request by STOPP, Inc. - Save Tonopah Oppose Poultry Plant, Don't Waste Arizona, the Socially Responsible Agricultural Project (SRAP) and concerned citizens of Tonopah, Arizona for the United States Environmental Protection Agency (EPA), Region 9 to pursue investigations and enforcement pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413, against Hickman Family Farms, Hickman's Egg Ranch, Inc. (permit # 140062; located at 41625 W. Indian School Road, Tonopah, Arizona) and Hickman's Egg Ranch (permit # 040136; located at 32425 Salome Highway Arlington, Arizona).

If EPA, Region 9's investigation findings are consistent with the allegations made herein, we further request that EPA revoke the Non Title V Air Quality Permits to Operate and/or Construct for both Hickman facilities. We also request that EPA prohibit any further construction at either site until each has applied for and been issued Title V permits. This is because we believe the Maricopa County Air Quality Department issued an Air Quality Permit to Operate and/or Construct without the proper application, without a proper New Source Review, and without an adequate understanding of the volume, types and sources of air pollutants to be emitted from either facility.

In addition, we raise concerns that the aforementioned operations are not properly reporting under the Emergency Planning and Community Right to Know Act (EPCRA), Sections 304, 42 U.S.C. §11004, and 313, 42 U.S.C. §11023.

Finally, we request that any appropriate fines and penalties be pursued if EPA Region 9's investigation finds violations consistent with our allegations herein or others not mentioned.

Hickman's Family Farms is a company producing shell eggs and egg products in Arizona. They operate a very large egg-laying concentrated animal feeding operation (CAFO) and egg processing facility in Arlington and are operating and expanding a very large CAFO and egg processing facility known as Hickman's Egg Ranch, Inc., also known as Desert Pride, in Tonopah, Arizona. The Tonopah facility currently houses 4,300,800 birds with a planned maximum total of 10-12 million birds. Hickman's Egg Ranch in Arlington currently houses 8 million hens and 4 million pullets. Both of these sites are located within Maricopa County.

I. The Hickman Operations Exceed Allowable VOC Emission Thresholds in The 8-Hour Ozone Nonattainment Area and Should be Required to Have a Clean Air Act Title V Permit

Stated below are the reasons why the Non-Title V Air Quality Permit to Operate and/or Construct should be revoked for both the Tonopah and Arlington sites and a Title V permit be required.

The operations are both located in an 8-hour Non-Attainment Area for Ozone. In 2008, the EPA revised the eight-hour ozone standard to 0.075 parts per million (ppm). More recently, on October 1, 2015, the Agency lowered the standard to 0.070 ppm.[1] On May 21, 2012, EPA published a final rule to designate the Maricopa nonattainment area as a Marginal Area with a December 31, 2015 attainment date. Because both facilities are located in the non-attainment area, the major source permit threshold for Volatile Organic Compound (VOC) emissions from each facility is100 tons per year (tpy) and we assume will soon be lower when the new federal standard for ozone is required to be implemented in Arizona.

The EPA released a report on emissions data from two manure belt layer houses in Indiana on July 31, 2010 as part of the National Air Emissions Monitoring Study[2] (NAEMS). The findings of that report showed that there was 0.0000596 kg/day[1] per bird of VOCs emitted from the Indiana facility, which housed 500,000 birds at the time of the study. Both Hickman facilities consist of manure belt caged layer hen houses. Each house is 60,000ft^2 and is ventilated by approximately 48 52-inch tunnel fans, which will move 28,000 cfm (cubic feet minute) under general operating conditions. Currently, Hickman's Egg Ranch, Inc. in Tonopah, Arizona houses approximately 4.3 million birds. The similarity of this operation to the Indiana study indicates that expected VOC emissions from this facility are approximately 256 kg/day or 103 tpy.

Representatives of Hickman Family Farms have indicated that full animal capacity of this site will eventually be 10-12 million birds. At the volume of animals planned for this facility, expected VOC emissions could reach 715 kg/day or 288 tpy. Our analysis shows that this facility has already reached the number to exceed emission 100 tpy of VOCs in a non-attainment

[1] EPA, Final Rule for National Ambient Air Quality Standards for Ozone,Docket No. EPA–HQ–OAR–2008-0699, October 1, 2015, *to be codified at:* 40 CFR Parts 50, 51, 52, 53 and 58.

[2] Heber, Albert J., "Emissions Data from Two Manure-Belt Layer Houses in Indiana: Final Report for Site IN2B of the National Air Emissions Monitoring Study," July 31, 2010, *available at*: http://www.epa.gov/airquality/agmonitoring/pdfs/IN2BSummaryReport.pdf.

area. The evaluation and analysis of the Indiana NAEMS data showed that the Number to Exceed Emissions Threshold (NEET) would be met at 4.6 million birds.[2] Either way, this facility is expanding to potentially house 12 million birds. Our estimations are as follows:
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a. Annual VOCs at Tonopah facility: (Currently - 4.3 million birds)~ (59.6mg/day/hen)꿿□η
0.0000596 kg/day/hen x 4.3 million birds = 256.28 kg/day[1] x 365 days = 93,542kg/year x 2.20462 lbs = 206,225 lb/yr = 103tpy (tons per year)
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b. Max. Annual VOCs at Tonopah facility: (12 million birds) ~ (59.6 mg/day/hen)꿿□η
0.0000596 kg/day/hen x 12 million birds = 715 kg/day[1] x 365 days = 261,048 kg/year x 2.20462 lbs = 575,512 lbs/yr = 288 tpy
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Also, our analysis of Hickman's Egg Ranch in Arlington shows that the 12 million birds currently housed at this site produce VOC emissions of 715 kg/day[1] or 288 tpy. 꿿□η

The above referenced calculations are from the horizontal ventilation systems of each laying house and therefore are non-fugitive and count towards the major source threshold. These calculations are only for the buildings that the birds are housed in. No emissions calculations were estimated for the manure sheds at the Tonopah site, nor the manure stacks at the Arlington facility. Additionally, the calculations do not include emissions from emergency diesel generators or process wastewater evaporation ponds at both facilities. Therefore, the actual emissions from each site are likely greater than our estimates indicate.
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Furthermore, eggs are washed, broken and further processed into liquid, hard-boiled and made into dehydrated products at the Arlington facility, so it is not an agricultural site, but in fact is an industrial food processing facility. Calculation of VOCs from the egg processing facility at Arlington has not been included in this complaint, but it should be as the egg processing facility is on the same property as the CAFO. There is also evidence of processing and production codependency between the Tonopah and Arlington sites. (This issue is discussed in more detail under Section III below.)꿿□η

According to data from the 2007 Maricopa 8-hour Ozone Plan Appendices vol.1, and our calculations based upon the results of the NAEMS study, both Hickman sites together are currently the top VOC stationary source in Maricopa County.
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II. Both Arlington and Tonopah Hickman Operations should be Considered as One Source Under the Clean Air Act 꿿□η

Even though these two sites are not contiguous, we believe that both of these CAFOs should be considered as one source per the definition of a CAFO under the federal Clean Water Act. The Act defines a CAFO as:
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> "Two or more AFO's under common ownership are considered one operation if, among other things, they adjoin each other (including facilities that are separated only by a right-of-way or a public road) *or if they use a common area or system for managing wast*es" [emphasis added] 40 CFR § 122.23(b)(2).
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For example, operations generally meet the criterion where manure, litter, or process wastewater are commingled (e.g., stored in the same pond, lagoon, or pile) or are applied to the same

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cropland.[3] Manure from the facility in Tonopah is being transported to the Arlington facility where it is then being stored in rows on the ground unprotected from the elements. The manure handling details for the Tonopah facility are found in the facility's Nutrient Management Plan.[4]

With regards to our argument that the Tonopah and Arlington Hickman operations should be considered one source, it should be noted that EPA Region 3 undertook the following considerations in determining whether two CAFO sites were a single source in a case that came before them under the Clean Air Act.[5] EPA based its determination on the following items: contractual agreements, adjacent location, financial interest based upon conversations with both facility owners, Dun and Bradstreet reports, common employees, shared equipment, and process/production codependency.

In the case at hand, both of Hickman's Arlington and Tonopah sites meet several of the above criteria for a "single source" determination. For example, both sites share equipment, feed, waste management systems, employees, process and production codependency, and financial interests. Therefore, based upon the same criteria that EPA Region 3 considered in making a "single source" determination, we suggest that Region 9 consider these two sites as one source. As such, when both of the Hickman facilities are considered together as one source, the operation would far exceed the threshold for emissions of VOCs. Our estimates are as follows:

NEET = 100 tpy

Arlington facility VOCs = 288 tpy

Tonopah facility VOCs (currently) = 103 tpy

Total VOCs = 391 tpy

Therefore, we believe both Hickman CAFOs should be considered as one source and operating under one Clean Air Act Title V permit.

III. Additional Concerns Regarding Hickman's Failure to Report Under the Emergency Planning and Community Right to Know Act

We also have additional concerns that the Hickman operations are not properly reporting under EPCRA. Section 304 of EPCRA, 42 U.S.C. §11004, requires that Ammonia (NH3) emissions greater than 100 lbs/day be reported.

[3] USEPA, Office of Water, *NPDES Permit Writers' Manual for Concentrated Animal Feeding Operations*, EPA-833-F-12-001, February 2012, *available at*: http://water.epa.gov/polwaste/npdes/afo/upload/cafo_permitmanual_chapter2.pdf(last visited on July 31, 2015).

[4] Hickman's Family Farms, Tonopah Plant, Nutrient Management Plan, dated Oct. 31, 2014,*available at*: https://drive.google.com/a/sraproject.org/file/d/0B7PSUIgpIbxicFFiV2YwMFMxdU0/view?usp=sharing .

[5] *See* Miller, Colombe, *Married Under the Clean Air Act – the Single Source Determination and Problems Arising Therefrom*, Trinity Consultants Report Control # 342, July 26, 2004 (*citing to* Letter from Judith Katz, USEPA, Region III to Gary Graham, Virginia Department of Environmental Quality, May 2, 2001).

Based on findings from the NAEMS IN2B study, any manure belt layer operation with over 157,000 birds should be reporting their Ammonia emissions. With regards to Hickman's Tonopah facility, our estimates are as follows:

a. Ammonia emissions at Tonopah facility: (Currently - 4.3 million birds)~ (70.6 kg/day/hen)

0.0002824 kg/day/hen x 4.3 million birds = 1214.32 kg/day[1] x 2.20462 lbs = 2,677 lb/day

b. Maximum daily Ammonia emissions at Tonopah facility: (12 million birds) ~ (70.6/day/hen)

0.0002824 kg/day/hen x 12 million birds = 3,388.8kg/day[-1] x 2.20462 lbs = 7,471 lbs/day

Also, our analysis of Hickman's Arlington facility shows that with the 12 million birds currently housed at this site, Ammonia emissions are 7,471 lbs/day[-1.]

Furthermore, neither the Tonopah or Arlington operations provided SIC/NAICS codes in their original Non Title V Air Quality Permit applications. Not only would these omissions make these applications technically incomplete, but also the Arizona Department of Environmental Quality (AZDEQ) and Maricopa County have failed to acknowledge the industrial and commercial activities taking place at both sites such that they should not be categorized as primarily "agricultural" operations. This is despite the fact that Hickman's even sought a zoning change for the Arlington site from the County to give it an "industrial" land use designation, due to the egg and fertilizer processing and manufacturing taking place there. [6]

We surmise that the operations should be categorized under SIC Code 2015 for Poultry Slaughtering and Processing under Division D: Manufacturing, Major Group 20: Food And Kindred Products,[7] SIC 5144 for Poultry and Poultry Products under Division F: Wholesale Trade, Major Group 51: Wholesale Trade-non-durable Goods, as well as SIC 2873 for Nitrogenous Fertilizers or 2875 for Fertilizers, Mixing Only under Manufacturing Major Group 28: Chemicals and Allied Products. The assignment of these categories to the operations are appropriate for the following reasons.

First, poultry processing manufacturing is taking place at both sites. According to local knowledge and belief, the Arlington facility has an egg-packaging plant and liquid-egg processing facility for the production of egg substitutes on site and there is an egg washing and packaging plant at the Tonopah site. It is also believed that egg products from the Tonopah site are being processed at the Arlington site. According to the company's website, 500,000 eggs per day are boiled, peeled and packaged and 100,000 eggs per day are broken, pasteurized, and packaged.[8]

[6] *See* Maricopa County Planning and Development Department Land Use Change Application from Rural Residential to Industrial by Hickman's Egg Ranch, Inc, dated June 19, 2009, *available at:* https://drive.google.com/file/d/0B7PSUIgpIbxiZy1Ndkt5aE1QUHM/view?usp=sharing.

[7] *See* Occupational Safety & Health Administration, SIC/NAICS database, *available at* https://www.osha.gov/pls/imis/sic_manual.display?id=13&tab=group.

[8] *See* Hickman's Family Farms, "Yesterday and Today," *available at*: http://www.hickmanseggs.com/yesterday-today/, *visited on* September 25, 2015.

In addition, fertilizer manufacturing with waste from both sites is taking place. There is a fertilizer plant on the Arlington site and, according to the Tonopah site's NMP, all manure is being transported off-site to a fertilizer plant. According to local knowledge and belief, the fertilizer plant at Arlington is accepting all of the waste from the Tonopah facility where manure, dead chickens, and other feedstocks are manufactured into fertilizer pellets, which would also emit significant amounts of ammonia. According to the Company's website, 800,000 pounds of chicken waste is processed into fertilizer per day. The fertilizer is dried, pelletized, bagged and shipped throughout Arizona and southern California.[9] Since waste from both Arlington and Tonopah sites is being manufactured into fertilizer at Arlington, an additional SIC/NAICS code of 2873 or 2875 should be assigned.

Because of the different types of significant industrial manufacturing, processing and commercial activities taking place at these facilities, it is quite possible that Section 313 of EPCRA, 42 U.S.C. §11023, also applies. This Section requires that if a facility manufactures or processes more than 25,000 lbs of Ammonia (NH_3) in a calendar year, or otherwise uses more than 10,000 lbs of Ammonia in a calendar year, it must report the releases of Ammonia to the Toxics Release Inventory using a Form R report. While it is unknown whether the egg or fertilizer processing, manufacturing or commercial activities contribute to over 50% of the revenues generated from the Arlington and Tonopah facilities to trigger Toxic Release Reporting under EPCRA (per the Form R report instructions), we believe this issue warrants an investigation by EPA.

Section 325 of EPCRA, 42 U.S.C. § 11045, allows civil and administrative penalties ranging up to $10,000 - $75,000 per violation or per day per violation when facilities fail to comply with the reporting requirements.[10] There is no evidence that Hickman Family Farms is meeting EPCRA reporting requirements and our research suggests these requirements should be met.

IV. Conclusion

The citizens of Maricopa County and the environment are suffering due to the blatant disregard of the Clean Air Act by Hickman's Family Farms, Hickman's Egg Ranch, Inc., and Hickman's Egg Ranch and the lack of oversight by the Arizona Department of Environmental Quality and the Maricopa County Air Quality Department. Furthermore, we believe that there has been a failure by both Hickman Arlington and Tonopah operations to report Ammonia emissions under EPCRA. This is also evidence of a disregard for the rule of law and the community. We encourage EPA Region 9 to view the impacts these facilities are having on the surrounding communities at the STOPP website where photo and video footage of significant air pollution and public health and welfare impacts are well documented.[11]

We urge EPA Region 9 to investigate and ultimately revoke the Non-Title V Air Quality Permits for both the Tonopah and Arlington facilities, prevent further construction until a new source review has been conducted at both facilities, and require a Title V permit issued. We also request

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[9] *Id.*

[10] SEPA, Office of Solid Waste and Emergency Response, *The Emergency Planning and Community Right to Know Act*, EPA 550-F-12-002, September 2012, *available at*: http://www2.epa.gov/sites/production/files/2015-05/documents/epcra_fact_sheet.pdf.

[11] *See* STOPP - Save Tonopah Oppose Poultry Plant Say NO! to Hickman's Egg Factory, *available at:* http://tonopahstopp.com.

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that EPA invoke any justifiable fines and penalties applicable under both the Clean Air Act and EPCRA. 꿤□η
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We are available to answer questions or provide additional information regarding any of the information contained herein. We look forward to hearing from Region 9 about any steps that will be taken in response to this complaint.
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Thank you for your immediate attention to this matter.
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Sincerely yours:

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