IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, and THE STATE OF NEBRASKA,	)	
Plaintiffs,	)	
v.	)	Civil Action No. [8:05CV93]
CITY OF MCCOOK, NEBRASKA, A Municipal Corporation	)	
Defendant.	)	

CONSENT DECREE BETWEEN UNITED STATES OF AMERICA, STATE OF NEBRASKA, AND CITY OF MCCOOK NEBRASKA

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WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint in this action concurrently with this Consent Decree alleging that Defendant, City of McCook, Nebraska (hereafter "McCook", "City" or "Defendant"), has violated Section 301 of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. § 1311, and a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, and Section 1412 of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. §§ 300g-1.

McCook is a municipal corporation organized and existing under the laws of the State of Nebraska. McCook owns and operates a publicly owned treatment works (hereafter "POTW"), that receives domestic and industrial wastewater and a public water system ("PWS") that utilizes ground water. The Complaint alleges that for the past five years or more, Defendant has failed to comply with the summer seasonal ammonia concentration and mass limitations contained in its National Pollutant Discharge Elimination System ("NPDES") permit for the POTW, issued under Section 402 of the CWA, 33 U.S.C. § 1342. The POTW discharges wastewater to the Republican River, which is on the Nebraska list of impaired waters under Section 303(d) of the CWA, 33 U.S.C. § 1313(d).

In its Complaint, the United States also alleges that the Defendant has violated the SDWA in that levels of nitrates are present in the PWS in excess of the maximum contaminant level (MCL) of 10 milligrams per liter (mg/L), and that levels of uranium are

present in the PWS in excess of the MCL of 30 micrograms per liter (µg/L). In addition, levels of arsenic in the source water for the City's PWS will likely exceed the MCLs for those contaminants as they become effective in Nebraska in 2006.

The State of Nebraska ("State") has been joined as a Plaintiff in this action pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e). Plaintiff, the State of Nebraska, on behalf of the Nebraska Department of Environmental Quality ("NDEQ") and the Nebraska Department of Health and Human Services Regulation and Licensure (HHSR&L), has joined the United States in the aforementioned Complaint alleging that Defendant, City of McCook, Nebraska, has violated the Nebraska Environmental Protection Act, Neb. Rev. Stat. §81-1501 (Reissue 1999 and Com. Supp. 2002) *et seq.*, and regulations promulgated thereunder, by failing to comply with the limitations and conditions of its NPDES permit, failing to comply with requirements for operation of its PWS, and by failing to comply with Administrative Orders issued by both NDEQ and HHSR&L requiring the City to comply with its NPDES permit and provide drinking water to its service population in compliance with PWS requirements, respectively.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, and without any admission of fact or law, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; Section 309(b) of the CWA, 33 U.S.C. § 1319(b); and Section 1414(b)(2) of the SDWA, 42 U.S.C. § 303g-3(b)(2), and over the Parties. Venue lies in the District of Nebraska pursuant to 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), and Section 1414(g)(2)(C) of the SDWA, 42 U.S.C. § 300g-3(g)(2)(C), and because Defendant resides and is located in this judicial district and the violations alleged in the Complaints are alleged to have occurred in this judicial district. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendant consents to the Court's jurisdiction over this Consent Decree or such action and over Defendant, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 301 of the CWA, 33 U.S.C. § 1311, and a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, and Sections 1414 and 1412 of the SDWA, 42 U.S.C. §§ 300g and 300g-1.

3. Notice of the commencement of this action has been given to the State pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

4. The Director of HHSR&L has requested the United States to initiate a civil judicial action pursuant to Section 1414(b)(2) of the SDWA, 42 U.S.C. § 300g-3(b)(2).

II. APPLICABILITY

5. The obligations of this Consent Decree apply to and are binding upon the United States and the State and upon Defendant and any successor or other entities or persons otherwise bound by law.

6. Any transfer of ownership or operation of the Facilities to any other person, prior to Termination of this Consent Decree pursuant to Section XIX, must be conditioned upon the transferee's agreement to undertake the obligations required by this Consent Decree, as provided in a written agreement between Defendant and the proposed transferee, enforceable by the United States and the State as third-party beneficiary of such agreement. At least thirty days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region VII, the United States Attorney for the District of Nebraska, the United States Department of Justice, and the State of Nebraska, in accordance with Section XV of this Consent Decree (Notices). Any attempt to transfer ownership or operation of the Facilities without complying with this Paragraph constitutes a violation of this Consent Decree. No transfer of ownership or operation of the Facilities, whether in compliance with this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Consent Decree are implemented.

7. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree.

8. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, successors, assigns, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

9. Terms used in this Consent Decree that are defined in the CWA or the SDWA, or in regulations promulgated pursuant to the CWA or the SDWA, shall have the meanings assigned to them in the statutes or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Consent Decree" or "Decree" shall mean this Decree;

b. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

c. "Defendant" shall mean the City of McCook, Nebraska;

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

e. "Facility" or "Facilities" shall mean Defendant's publicly owned treatment plant ("POTW") and/or Public Water System ("PWS") in McCook, Nebraska;

f. "Maximum Contaminant Level" or "MCL" shall mean the maximum permissible level of a contaminant in water which is delivered to any user of a public water system, as defined by and identified in 40 C.F.R. Part 141, and Title 179 Nebraska Administrative Code Chapter 2.

g. "NDEQ" shall mean the Nebraska Department of Environmental Quality, which is the agency authorized to administer the NPDES program in Nebraska under the provisions of Section 402(b) of the CWA, 33 U.S.C. § 1342(b);

h. "HHSR&L" shall mean the Nebraska Department of Health and Human Services Regulation and Licensure, which is the agency authorized to administer the Public Water Supply System program under the provisions of Section 1413 of the SDWA, 42 U.S.C. § 300g-2;

i. "NPDES" shall mean the National Pollutant Discharge Elimination System authorized under Section 402 of the CWA, 33 U.S.C. § 1342;

j. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral;

k. "Parties" shall mean the United States, the State of Nebraska, and Defendant;

l. "POTW" shall mean a publicly owned treatment works as defined at 40 C.F.R. § 403.3;

m. "PWS" shall mean a Public Water System as defined at Section 1401 of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2;

n. "Section" shall mean a portion of this Consent Decree identified by a roman numeral;

o. "State" shall mean the State of Nebraska;

p. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

10. Defendant shall pay the sum of $175,500 as a civil penalty to the United States. Of this civil penalty amount, $131,000 is attributable to penalties for violations of the SDWA and $44,500 to penalties for violations of the CWA. Payment shall be made as follows: $100,000 shall be due within thirty days after the Effective Date of this Consent Decree and the remaining $75,500, plus accrued interest at a rate established by the Treasury pursuant to 28 U.S.C. § 1961, shall be made by February 16, 2006 . Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Defendant by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Nebraska

following lodging of the Consent Decree. Any payments received by the United States after 4:00 p.m. Eastern Time shall be credited on the next business day. At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation, which should reference DOJ case number 90-5-1-1-08273, to the United States and EPA in accordance with Section XV of this Consent Decree (Notices).

11. Defendant shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

12. On or before February 16, 2006, Defendant shall pay, pursuant to Neb. Const. art. VII, sec. 5 a civil penalty of $49,500 to the State of Nebraska. Of this amount, $5000 is attributable to penalties for violations of the Nebraska Safe Drinking Water Act, and the remainder ($44,500) to penalties for violations of the NPDES permit. Payment of the civil penalty and any accrued interest, made payable to the "Clerk, District Court, Red Willow County," shall be delivered to:

Jodi Fenner
Assistant Attorney General
Chief, Agriculture, Natural Resources & Environment *Section*
2115 State Capitol Building
Lincoln, Nebraska 68509-8920

13. If Defendant fails to pay the civil penalties required to be paid under Section IV of this Consent Decree (Civil Penalty) when due, interest shall accrue on any amounts overdue under the terms of this Consent Decree at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. §1961. Interest is to be paid from the

date said payment is due until all amounts owed are paid. Late payment of the civil penalty shall be made in accordance with Section IV, Paragraphs 10 and 12, above. Stipulated Penalties shall be paid in accordance with Section IX, Paragraph 42, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Consent Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraphs 10 and 12, above.

V. GENERAL COMPLIANCE REQUIREMENTS

14. Defendant shall comply with Sections 1412 of the SDWA, 42 U.S.C. § 300g-1, and with regulations promulgated thereunder at 40 C.F.R. Parts 141 and 142, and with the Nebraska Safe Drinking Water Act and Title 179 Nebraska Administrative Code Chapters 2 through 22.

15. Defendant shall comply with the CWA, 33 U.S.C. § 1251 *et seq.*, and with regulations promulgated thereunder at 40 C.F.R. Parts 122, 123 and 403, and Neb. Rev. Stat. §§ 81-1506 and 81-1508, and with the terms, conditions and requirements of NPDES Permit Number NE 0021504.

16. As a condition of settlement, Defendant will not appeal the effluent limitations and compliance schedule in NPDES Permit Number NE 0021504 effective February 1, 2005.

17. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit

timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section X (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. SAFE DRINKING WATER ACT COMPLIANCE REQUIREMENTS

18. MCL Compliance. Defendant shall be in full compliance with all applicable MCLs, particularly for Nitrate, Uranium and Arsenic, as set forth in 40 C.F.R. Part 141, and Nebraska's Regulations Governing Public Drinking Water Supply Systems, Title 179 NAC Ch. 2 - 22, on or before March 31, 2006.

19. Monitoring and Record Keeping Requirements. Defendant shall conduct monitoring and retain all records necessary for demonstrating compliance with PWS requirements pursuant to 40 C.F.R. Part 141 and Nebraska's Regulations Governing Public Drinking Water Supply Systems, Title 179 NAC Ch. 2 - 22, including, but not limited to:

a. Monitor all points of entry for compliance with all MCLs specifically quarterly monitoring for nitrate concentrations. Include the well identification number on the Laboratory Analysis Sheet. If a well which

has been placed on "emergency use only" status is used during a quarter, then that well must be tested for nitrate concentration during that quarter.

20. Alternate Water. For as long as the level of nitrate as nitrogen exceeds 10 ppm in any quarterly point of entry sample Defendant shall provide an alternate source of drinking water for all infants who are six months of age or less, for mothers who are nursing these infants, and for pregnant women, in quantities adequate for drinking and cooking needs, and at no additional separate cost. The alternate safe water must meet water quality requirements as set forth in Nebraska's Regulations Governing Public Drinking Water Supply Systems, Title 179 NAC 2 Section 002.02.

21. Public Notifications. Defendant shall provide the following public notifications:

(a) For as long as the level of nitrate as nitrogen exceeds 10 ppm in any quarterly point of entry sample, Defendant shall notify the public of the level of contaminants in the PWS and the availability of alternate water. Public notification must be made to the following groups by the following methods:

i. Notify the consuming public: 1) by continuous posting in conspicuous places within the area served by the PWS beginning no later than 14 days of the effective date of this Consent Decree under Section XVI: 2) by annually mailing or hand delivering a notice to all customers of the PWS (a notice with the water bill is acceptable) with the first annual notice under this Consent Decree to be completed within 12 months of a previous conforming notice, or if no prior notice has been given, within 30 days of the effective date of this

Consent Decree under Section XVI; and 3) by notifying new customers at the time of initial contact.

ii. Notifying local physicians, and any other appropriate parties. This notification must be accomplished semiannually by mail or hand delivery within six months of any previous conforming notice, or if no prior notice has been given, within 30 days of the effective date of this Consent Order under Section XVI.

iii. Notify the transient population of the existing situation by placing permanent postings in restaurants, gas stations, parks, and other locations where water is available to this population.

iv. The notifications provided under this Paragraph shall, at a minimum, contain the information supplied in the sample notice included as Attachment A to this Consent Decree.

(b) If the level of nitrate as nitrogen concentrations of nitrate in any quarterly point of entry sample in the most recent twelve month period meets or exceeds 20 ppm (20 mg/L), the Defendant shall immediately:

i. Notify the consuming public beginning no later than 24 hours after Defendant learns of the test result: 1) by continuous posting in conspicuous places within the area served by the PWS; 2) through appropriate broadcast media (such as radio and television) and 3) by notifying new customers at the time of initial contact.

ii. Notifying local physicians, and any other appropriate parties. This notification must be accomplished beginning no later that 24 hours after defendant learns of the test result.

iii. Notify the transient population of the existing situation by placing permanent postings in restaurants, gas stations, parks, and other locations where water is available to this

population beginning no later than 24 hours after defendant learns of the test result.

(c) If the running annual average of uranium exceeds 30 ug/l (30 ppb)

in any point of entry sample, Defendant shall:

i. Notify the consuming public no later than thirty (30) days after Defendant learns of the violation.

ii. As long as the violation persists, defendant must repeat the notice every three months.

iii. Notification must be provided: (1) annually by mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the Defendant; and (2) by at least one other method reasonably calculated to reach other persons regularly serve by the Defendant if they would not normally be reached by mail or other direct delivery. Such persons include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods may include: Publication in a local newspaper, delivery of multiple copies for distribution by customers that provide their drinking water to others; and by posting in public places served by the system or on the Internet; or delivery to community organizations. Defendant must use one of the other methods listed above.

iv. The notifications provided under this Paragraph shall, at a minimum, contain the information supplied in the sample notice included as Attachment B to this Consent Decree.

(d) If the running annual average level of arsenic exceeds 0.010 mg/l

(10 ppm) in any point of entry sample in any quarter sample

Defendant shall:

i. Notify the consuming public no later than thirty (30) days after Defendant learns of the violation.

ii. As long as the violation persists, Defendant must repeat the notice every three months.

iii. Notification must be provided: (1) annually by mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the Defendant; and (2) by at least one other method reasonably calculated to reach other persons regularly serve by the Defendant if they would not normally be reached by mail or other direct delivery. Such persons include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). Other methods include: Publication in a local newspaper, delivery of multiple copies for distribution by customers that provide their drinking water to others; and by posting in public places served by the system or on the Internet; or delivery to community organizations. Defendant must use one of the other methods listed above.

iv. The notifications provided under this Paragraph shall, at a minimum, contain the information supplied in the sample notice included as Attachment C to this Consent Decree.

22. Actions Required if Nitrate Concentrations Exceed 20 ppm. If the concentrations of nitrate in a sample from POE #011 exceeds 20 ppm (20 mg/L), the Defendant shall immediately discontinue the use of that well or provide alternate safe water, as described in Subparagraphs a and b of Paragraph 20 above, to all consumers until the concentration of nitrate in that well is less than 20 ppm for two consecutive quarters.

23. Compliance Schedule. Defendant must complete construction of modifications to the PWS and meet full compliance with all applicable MCLs, including

current MCLs for Nitrates and Uranium and the Arsenic MCL which will be effective in 2006, as follows:

a. Defendant has submitted to HHSR&L, a "City of McCook, Nebraska Water Treatment System – Critical Path Schedule" (dated December 13, 2004) (hereinafter the "PWS Critical Path Schedule"), which includes interim dates and milestone dates for construction of necessary PWS improvements to achieve compliance. HHSR&L will, in consultation with EPA, review the PWS Critical Path Schedule, and either approve it or require modifications thereto. If HHSR&L determines modifications are required, the City of McCook agrees, subject to Section XI of this Consent Decree, to reply within ten working days of notice by HHSR&L by resubmitting the PWS Critical Path Schedule to HHSR&L for approval with the required modifications. HHSR&L reserves the right to make minor unilateral modifications to the PWS Critical Path Schedule.

b. Once approved, Defendant shall submit to HHSR&L for review and approval technical plans and specifications in conformance with the PWS Critical Path Schedule necessary to achieve compliance with the 40 C.F.R. Part 141, Nebraska's Regulations Governing Public Drinking Water Supply Systems, Title 179 NAC 2 Section 002.02, and Paragraph 18 of this Consent Decree.

c. The approved PWS Critical Path Schedule including any dates, milestones, and reporting requirements set forth therein, is hereby incorporated into this Consent Decree and enforceable thereunder, and shall be implemented by Defendant.

d. The approved PWS Critical Path Schedule shall be altered only in accordance with Section XVIII of this Consent Decree (Modifications).

e. PWS progress report submittals shall be due to EPA and HHSR&L on April 1, 2005, July 1, 2005, October 1, 2005, January 1, 2006, April 1, 2006, and July 1, 2006. The final compliance date is March 31, 2006.

VII. CLEAN WATER ACT COMPLIANCE REQUIREMENTS

24. Permit Compliance. Defendant shall be in full compliance with the effluent limitations and conditions set forth in NPDES Permit No. NE 0021504 on or before October 1, 2006.

25. Compliance Schedule. Defendant must complete construction of modifications to the POTW and meet full compliance with applicable NPDES Permit limits as follows:

a. Defendant has submitted to NDEQ, for review and approval, a Facility Plan, as required by NPDES Permit No. NE 0021504, as amended, The Facility Plan contains full engineering details for construction and/or modification activities designed to bring Defendant's POTW into compliance with the NPDES Permit.

b. NDEQ will, in consultation with EPA, review the Facility Plan, and either approve it or require modifications thereto. Within 15 days of receipt of comments (if any) from NDEQ regarding the Facility Plan, including the interim dates and milestones, Defendant shall, subject to Section XI of this Consent Decree, make modifications and changes as directed, and resubmit the NPDES Facility Plan to EPA and NDEQ.

c. The approved Facility Plan, including any dates and milestones set forth therein, is hereby incorporated into this Consent Decree and enforceable thereunder, and shall be implemented by Defendant.

d. The approved Facility Plan, and any interim dates and milestones, shall be altered only in accordance with Section XVIII of this Consent Decree (Modifications).

e. NPDES progress report submittals shall be due to EPA and NDEQ: April 1, 2005; July 1, 2005; October 1, 2005; January 1, 2006; April 1, 2006; July 1, 2006; October 1, 2006; and January 1, 2007. The final compliance date is October 1, 2006.

VIII. REPORTING REQUIREMENTS

26. Until termination of the Consent Decree pursuant to Section XIX, Defendant shall provide information and submit reports to the appropriate United States and State contacts identified in Section XV (Notices) of this Consent Decree as follows:

a. PWS Reporting. Defendant shall submit:

i. to HHSR&L and EPA, reports that include detailed information for all activities undertaken in compliance with Paragraphs 18 through 22 of this Consent Decree. Such reports shall be submitted by April 30, 2005 and include, but not be limited to, the results of all monitoring required to be conducted pursuant to this Consent Decree, copies representative of all public notices, information regarding dissemination of all public notices, any measure taken to provide alternative water, and any measure taken with respect to a wellhead protection program; and

ii. to HHSR&L and EPA, detailed reports pursuant to the reporting requirements under the approved PWS Critical Path Schedule on all activities undertaken to comply with the requirement in Paragraph 23 of this Consent Decree; and

iii. to EPA, a copy of all reports required under Title 179 Nebraska Administrative Code 4 & Title 179 Nebraska Administrative Code 2 at the same time each such report is submitted to the HHSR&L.

b. NPDES Reporting. Defendant shall submit:

i. to NDEQ and EPA, detailed reports pursuant to the reporting requirements under the approved NPDES Facility Plan on all activities undertaken to comply with the requirement in Paragraph 25 of this Consent Decree;

ii. to EPA a copy of all reports required under NPDES Permit No. NE 0021504 at the same time each such report is submitted to NDEQ as required by the Permit; and

iii. to the NDEQ and EPA, accompanying reports submitted under subparagraph ii above, a copy of all laboratory reports showing the values of all influent and effluent monitoring required pursuant to NPDES Permit No. NE 0021504.

27. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree or of any applicable permit, Defendant shall notify the United States and the State of such violation and its likely duration in writing within

ten business days of the day Defendant first becomes aware of the violation or the potential violation, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall include a statement to that effect in the report. Defendant shall diligently investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the requisite notice for purposes of Section X (Force Majeure).

28. In the case of any violation or other event that may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify the United States and the State orally or by electronic or facsimile transmission as soon as possible, but not later than 24 hours after Defendant first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph or as set forth in federal or State law by applicable permit.

29. All reports shall be submitted to the persons designated in Section XV of this Consent Decree (Notices).

30. Each report submitted by Defendant under this Section regarding compliance with CWA requirements shall be signed by an authorized official, as defined at 40 C.F.R. § 122.22, of the submitting party and include the following certification:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision as the responsible company official in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

31. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the SDWA or the CWA, or implementing regulations of either statute, or by any other federal, state, or local law, regulation, permit, or other requirement.

32. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

IX. STIPULATED PENALTIES

33. Defendant shall be liable for Stipulated Penalties to the United States and the State (split 50% each, up to $5,000 for PWS Violations to the State) for violations of

this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

34. PWS Violations: The following Stipulated Penalties shall accrue per violation for each violation of the following MCL and other requirements for Defendant's PWS occurring after the date of lodging of this Consent Decree:

Violation Type	Period of Violation	Stipulated Penalty
Nitrate	Quarterly	$ 5,500/qtr
Monitoring and Reporting	Quarterly	$5,500/qtr
Public Notification	Monthly	$2,400/monthly
Failure to provide alternative water source	Per Day	$100/person/day

35. The following Stipulated Penalties shall accrue per violation for each quarterly compliance period during which the running annual average exceed the MCL after the effective date as follows:

Violation Type	Period of Violation	Stipulated Penalty
Radionuclides Effective March 31, 2006	Running Annual Average	$4075/quarter
Arsenic Effective January 23, 2007	Running Annual Average	$4075/quarter

36. NPDES Effluent Limits. The following Stipulated Penalties shall accrue for each violation of the effluent limitations for Ammonia in Defendant's NPDES permit:

Period of Noncompliance	Penalty Per Violation
Maximum Effluent Limit	$200
Monthly Effluent Limit	$4000

37. Monitoring and Record Keeping Milestones. The following Stipulated Penalties shall accrue for each violation of the monitoring and record keeping requirements of Paragraphs 18 and 24 of this Consent Decree:

Period of Noncompliance	Penalty Per Violation Per Day
1-30 days	$1,000
31-60 days	$2,000
61 or more days	$3,000

38. Reporting Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting requirements of Section VIII of this Consent Decree:

Period of Noncompliance	Penalty Per Violation Per Day
1-30 days	$1,000
31-60 days	$2,000
61 or more days	$3,000

39. Compliance Schedule Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of a compliance deadline in Paragraphs 18, 23, 24, and 25 of the Consent Decree, or for each violation of a significant interim date or milestone in the PWS Critical Path Schedule and the NPDES Facility Plan approved by the State and incorporated into the Consent Decree pursuant to Paragraphs 23 and 25. The significant interim dates and milestones for the PWS Critical Path Schedule are October 31, 2004 - Treatment Process and Equipment; February 15, 2005 - Building; and May 20, 2005 - Instrumentation and Control Package. The significant interim dates and milestones for the NPDES Facility Plan are June 19, 2005 - submittal of complete plans and specifications; September 30, 2005 - issue notice to proceed for initiation of construction:

Period of Noncompliance	Penalty Per Violation Per Day
1-30 days	$1,000
31-60 days	$2,000
61 or more days	$3,000

40. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for each individual violation of this Consent Decree. Defendant shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand.

41. Stipulated Penalties shall continue to accrue as provided in Paragraph 44 during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below;

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen days of receiving the final appellate court decision.

42. Defendant shall pay Stipulated Penalties for violations of NPDES Permit No. NE 0021504 occurring between the date of lodging and the Effective Date of this Consent Decree within 30 days of the Effective Date of this Consent Decree.

43. Stipulated Penalties assessed under Paragraph 38 for Defendant's failure

to meet a compliance deadline shall continue to accrue and are payable at the time of the violation. However, should Defendant meet the date for completion of construction of the relevant project, Defendant will be entitled to a reduction of one half of all Stipulated Penalties attributable to the defendant's failure to meet that interim milestone date.

44. Defendant shall, as directed by the United States, pay Stipulated Penalties owing to the United States and the State by EFT in accordance with Section IV, Paragraph 10, above or by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-08273, and delivered to the office of the United States Attorney, District of Nebraska, 487 Federal Building, 100 Centennial Mall North, Lincoln, Nebraska, 68508.

45. Defendant shall not deduct Stipulated Penalties paid under this Section in calculating its federal income tax.

46. If Defendant fails to pay Stipulated Penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

47. Subject to the provisions of Section XIII of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States and the State for Defendant's violation of this Consent Decree or applicable law.

X. FORCE MAJEURE

48. A "force majeure event" is any event beyond the control of Defendant, its contractors and consultants, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not, in any event, be considered "force majeure" events. In addition, failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree or failure of Defendant to approve contracts, shall not, in any event, be considered "force majeure" events. However, if a permitting authority fails to issue, renew or modify--or delays in issuing, renewing or modifying--a lawful permit, order or other action required for any part of the work under this Consent Decree, Defendant is entitled to seek relief under the "force majeure" provisions of this Consent Decree.

49. Defendant shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendant shall also provide written notice, as provided in Section XV

of this Consent Decree (Notices), within seven days of the time Defendant first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendant's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendant's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendant from asserting any claim of force majeure.

50. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Defendant to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XVIII of this Consent Decree (Modification).

51. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendant, the United States' position shall be binding, unless Defendant invokes Dispute Resolution under Section XI of this Consent Decree. In any such dispute, the provisions of Section XI (Dispute Resolution) shall apply and Defendant bears the burden of proving that each claimed force majeure event is a force majeure event; that Defendant gave the notice required by Paragraph 47; that the force majeure event caused any delay Defendant

claims was attributable to that event; and that Defendant exercised best efforts to prevent or minimize any delay caused by the event.

XI. DISPUTE RESOLUTION

52. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of the Defendant that have not been disputed in accordance with this Section.

53. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States in consultation with the State shall be considered binding unless, within 14 days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

54. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State a written Statement of Position regarding the

matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

55. The United States, in consultation with the State, shall serve its Statement of Position within 45 days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and all supporting documents relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

56. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 20 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

57. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

58. In any dispute under this Paragraph, Defendant shall bear the burden of demonstrating that actions or positions taken are in accordance with and will assure Defendant's compliance with the terms, conditions, requirements and objectives of this Consent Decree, the CWA, the SDWA, and all rules and regulations promulgated thereunder. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

59. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 40, above. If Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. INFORMATION COLLECTION AND RETENTION

60. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry to any Facility

covered by this Consent Decree, at all reasonable times, upon presentation of credentials to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Defendant or its representative, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendant's compliance with this Consent Decree.

61. Upon request, Defendant shall provide EPA and the State or their authorized representatives splits of any samples taken by Defendant. Upon request, EPA and the State shall provide Defendant splits of any samples taken by EPA or the State.

62. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records or documents in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This record

retention requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States or the State may request copies of any documents or records required to be maintained under this Paragraph.

63. At the conclusion of the document-retention period provided in the preceding Paragraph, Defendant shall notify the United States and the State at least 90 days prior to the destruction of any records or documents subject to the requirements of the preceding Paragraph, and, upon request by the United States or the State, Defendant shall deliver any such records or documents to EPA or the State. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

64. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State

pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain records or information imposed by applicable federal or state laws, regulations, or permits.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

65. This Consent Decree resolves the civil claims for the violations alleged in the Complaint filed by the United States and the State in this action through the date of lodging.

66. This Consent Decree shall not be construed to prevent or limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions.

67. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, 33 U.S.C. § 1251, *et seq.*, or the SDWA, 42 U.S.C. § 300f, *et seq.*

68. This Consent Decree does not limit or affect the rights of Defendant or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

69. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

70. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

XIV. COSTS

71. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XV. NOTICES

72. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing, by certified mail, and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08273

and

United States Attorney's Office
District of Nebraska
1620 Dodge Street, Suite 1400
Omaha, NE 68102-1506
Telephone: 402-661-3700
Fax: 402-661-3081

To EPA:

Chief, Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Patricia Gillispie Miller
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101

To the State:

Jack Daniel
Section Administrator
Environmental Health Section
Nebraska Department of Health and Human Services
Regulation and Licensure

P.O. Box 95007
Lincoln, NE 68509

Pat Rice
Division Administrator Water Quality
Nebraska department of Environmental Quality
Box 98922
Lincoln, NE 68509

To Defendant:

City Manager
City of McCook
P.O. Box 1059
McCook, NE 69001

73. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

74 Notices submitted pursuant to this Section shall be deemed submitted upon mailing, by certiified mail, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVI. EFFECTIVE DATE

75. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVII. RETENTION OF JURISDICTION

76. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Consent

Decree or entering orders modifying this Consent Decree, pursuant to Sections XI and XIX, or effectuating or enforcing compliance with the terms of this Consent Decree.

XVIII. MODIFICATION

77. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

XIX. TERMINATION

78. After Defendant has maintained continuous satisfactory compliance with the requirements of the CWA and SDWA, its permit, and this Consent Decree for a period of 18 months after completion of all construction required by Consent Decree and a demonstration that MCL and permits are being met, provided that Defendant has paid the civil penalties and any accrued Stipulated Penalties as required by this Consent Decree, Defendant may serve upon the United States and the State a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

79. Defendant may, in its discretion, submit a separate request for termination of the sections in this Consent Decree relating to the Defendant's NPDES permit requirements (Paragraphs 24, 25, 26(b) and 36) and/or Defendant's PWS requirements (Paragraphs 18 through 23, 26(a), 34 and 35).

80. Following receipt by the United States and the State of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the State, agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

81. If the United States, after consultation with the State, does not agree that the Consent Decree may be terminated, Defendant may invoke Dispute Resolution under Section XI of this Consent Decree. However, Defendant shall not seek Dispute Resolution of any dispute, under Paragraph 52 of Section XI, until 10 days after service of its Request for Termination.

XX. PUBLIC PARTICIPATION

82. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice.

XXI. SIGNATORIES/SERVICE

83. Each signatory to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

84. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

85. Defendant agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

86. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXII. INTEGRATION

87. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XXIII. FINAL JUDGMENT

88. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and Defendant.

89. Upon execution of this document, the original Consent Decree shall be returned to the United States Attorney's Office and a copy of the Consent Decree shall be maintained in the Clerk's Office.

SO ORDERED THIS ____ DAY OF _____, 2005

_____
UNITED STATES DISTRICT JUDGE
District of Nebraska

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: 2/25/05

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division

COURTNEY E. INGRAFFIA
Trial Attorney. D.C. Bar No. 456364
Environmental Enforcement Section
Environmental and Natural Resources Division
United States Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-2800
Fax: (202) 514-4180
Courtney.Ingraffia@usdoj.gov

MICHAEL G. HEAVICAN
United States Attorney
District of Nebraska

Date: 3/2/05 By:

LAURIE KELLY, Mass. Bar No. 557575
Assistant United States Attorney
District of Nebraska
1620 Dodge Street, Suite 1400
Omaha, NE 68102-1506
Telephone: 402-661-3700
Fax: 402-661-3081
laurie.kelly@usdoj.gov

FOR PLAINTIFF STATE OF NEBRASKA:

John Bruning
Attorney General

Date: February 18, 2005

Jodi M. Fenner, NE Bar No. 22038
Assistant Attorney General
Chief, Agriculture, Natural Resources &
Environment Section
2115 State Capitol Building
Lincoln, Nebraska 68509-8920
Telephone: (402) 471-2682
Fax: (402) 471-2957
jfenner@notes.state.ne.us

Justin D. Lavene, NE Bar No. 22178
Assistant Attorney General
Agriculture, Natural Resources &
Environment Section
2115 State Capitol Building
Lincoln, Nebraska 68509-8920
Telephone: (402) 471-2682
Fax: (402) 471-2957
jlavene@notes.state.ne.us

FOR PLAINTIFF U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 2/23/05

for JAMES B. GULLIFORD
Regional Administrator
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101

Date: Feb. 18, 2005

PATRICIA GILLISPIE MILLER, KS Bar. No. 12096
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101
Telephone: (913) 551-7283
Fax: (913) 551-7925
Miller.Patriciag@epamail.epa.gov

FOR DEFENDANT THE CITY OF MCCOOK, NEBRASKA:

Date: Feb 11, 2005

CITY OF MCCOOK, NEBRASKA,
a municipal corporation

By: _____
Mayor Dennis Berry

Attest: _____
City Clerk Lea Ann Doak

DRINKING WATER WARNING

«PWSNAMEl» HAS HIGH LEVELS OF NITRATE

DO NOT GIVE THE WATER TO INFANTS UNDER 6 MONTHS OLD
OR USE IT TO MAKE INFANT FORMULA

In accordance with the Department of Health and Human Services (HHS) Regulations Governing Public Water Supply Systems, th consumers of the «PWSNAME1» public water supply system are hereby notified that the system is in violation of the established d water standard of 10 milligrams per liter. Nitrate has been measured at an average concentration of 12 milligrams per liter in two sa collected from this system on **January 10, 2005 and January 25, 2005. Nitrate in drinking water is a serious health concern fo infants less than six months old.**

What should I do?

. DO NOT GIVE THE WATER TO INFANTS. ***Infants below the age of six months who drink water containing nitrate in exc the MCL could become seriously ill and, ifuntreated, may die. Symptoms include shortness of breath and blue baby syndrome.*** B baby syndrome is indicated by blueness of the skin. Symptoms in infants can develop rapidly, with health deteriorating over a perio days. If symptoms occur, seek medical attention immediately.

. Water, juice, and formula for children under six months of age SHOULD NOT be prepared with tap water. Bottled water or other water low in nitrates should be used for infants until further notice.

. DO NOT BOIL THE WATER. Boiling, freezing, or letting water stand does not reduce the nitrate level. Excessive boiling can the nitrates more concentrated, because nitrates remain behind when the water evaporates.

. Adults and children older than six months can drink the tap water (nitrate is a concern for infants because they cannot process nitr the same way adults can). However, if you are pregnant or have specific health concerns, you may wish to consult your doctor.

What happened? What is being done?

Nitrate in drinking water can come from natural, industrial, or agricultural sources (including septic systems and run-off). Levels of in drinking water can vary throughout the year. We'll let you know when the amount of nitrate is again below the limit.

Corrective actions taken:

For additional information regarding this notice, please contact _____at _____

This notice is being sent to you by the «PWSNAMEl». Date distributed:

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this no a public place or distributing copies by hand or mail.

Attachment A

f. f

IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER

The City of McCook Has Levels

of Uranium Above Drinking Water Standards

In accordance with the Department of Health and Human Services (HHS) Regulations Governing Public Water Supply Systems, th consumers of the City of McCook public water system are hereby notified that the system is in violation of the established drinking standard of 30 micrograms per liter (or parts per billion) for uraruum.

Uranium was measured at an average of 32 micrograms per liter at Point of Entry 011 in routine samples collected on March 8, 200 April 12, 2004, August 11, 2004, and October 12,2004.

You have a right to know what happened, what you should do, and what is being done to correct the sitilation.

What Should I Do?

You are not required to obtain an alternate source of drinking water. Households with children under 12 years of age, pregnant wom and individuals with kidney disease may want to use bottled water for drinking water. People with health concerns may want to con with their physician.

What Does This Mean?

Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting can and kidney toxicity.

What Happened? What Is Being Done?

Uranium is a naturally occurring substance. It is a component of volcanic ash and some types of rocks carried to Nebraska by the g None of the uranium found in drinking water in Nebraska comes from any human activities.

Corrective Action:

The City of McCook anticipates resolving the problem within

For more information, please contact: Telephone and/or address:

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, peopl apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

This notice is being sent to you by: City of McCook State Water System ID. No: NE3114504

Date Distributed:

Attachment B

IMPORTANT INFORMATION ABOUT YOUR DRINKING WATER

The City of McCook Has Levels of Arsenic above Drinking Water Standards

In accordance with the Nebraska Department of Health and Human Services (HHS) Regulations Governing Public Water Supply Systems, the consumers of the **City of McCook** public water supply system are hereby notified that the system is in violation of the established drinking water standard of 0.010 milligrams per liter (mg/L) for the quarterly period of _____ through _____. Arsenic has been measured at an (ANNUAL ?) average concentration of _____ in a routine samples collected from this system.

The dates of, and results from the actual samples taken were as follows:

Date Sampled	Results
_____	_____
_____	_____
_____	_____
_____	_____

You have a right to know what happened, what you should do, and what is being done to correct the situation.

What Does This Mean?

Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

What should I do?

- **DO NOT BOIL THE WATER.** Boiling, freezing, or letting water stand does not reduce the arsenic level. Excessive boiling can make the arsenic more concentrated, because arsenic remains behind when the water evaporates.
- **You do not need to use an alternative (e.g., bottled) water supply.** This is not an immediate risk. The effects associated with exposure to arsenic at these levels are the result of many years of constant exposure. However, if you have health concerns, consult your doctor.

What happened? What is being done?

Arsenic is a metal found in natural deposits as ores containing other elements. Arsenic in drinking water is commonly due to the erosion of these natural deposits. Other possible sources of arsenic contamination include runoff from mining operations, orchards, or glass and electronics production wastes.

Corrective actions taken: _____

The City of McCook anticipates resolving the problem within _____

Please share this information with all other people who drink this water who may not have received this notice directly (People in apartments, nursing homes, schools, and businesses). This can be done by posting this notice in a public place or distributing copies by had delivery or mail

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For additional information regarding this notice, please contact _____at_____

This notice is being sent to you by **the City of McCook.** Date distributed: _____

Attachment C