

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
and THE STATE OF NEBRASKA,)
ex rel. MICHAEL J. LINDER,)
DIRECTOR, NEBRASKA DEPARTMENT)
OF ENVIRONMENTAL QUALITY,)
)
Plaintiffs,)
)
v.) Civil Action No. 8:00-CV-28
)
IBP, inc.,)
)
Defendant.)
_____)

SECOND AND FINAL PARTIAL CONSENT DECREE

WHEREAS, The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a Second Amended Complaint in this matter ("Complaint"), pursuant to Sections 325(b)(3) and (c)(4) of the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11045(b)(3), Section 109(c) of the Comprehensive Environmental Response and Compensation Liability Act ("CERCLA"), 42 U.S.C. § 9609(c), Section 113(b) of the Clean Air Act, as amended ("CAA"), 42 U.S.C. § 7413(b), Sections 309(b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(b) and (d), and Sections 3008(a) and (g) of the Solid Waste Disposal Act ("SWDA"), as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid

Waste Amendments, 42 U.S.C. §§ 6928(a) and (g)(hereinafter referred to collectively as "RCRA"), and regulations promulgated thereunder, against Defendant IBP, inc. ("IBP"), alleging violations of federal and state environmental laws at a complex of slaughterhouse, tannery, and wastewater processing facilities owned and operated by IBP and located in Dakota City and South Sioux City Nebraska (the "Dakota City Facility"), and at a number of other past and present IBP operations located in Iowa, Nebraska, Kansas and Texas, as specified in the Complaint;

WHEREAS, the United States in its Complaint seeks, inter alia, injunctive relief and the imposition of civil penalties against IBP for the violations alleged in the Complaint;

WHEREAS, the Nebraska Department of Environmental Quality ("NDEQ") is an agency of the State of Nebraska (the "State") authorized to file suit in the name of the State to enforce state environmental protection statutes, regulations and permits issued by the NDEQ, see Neb. Rev. Stat. § 81-1504 (1994), as well as to enforce the Clean Air Act pursuant to its citizen suit provisions, 42 U.S.C. §§ 7604 and 7602, and has joined in certain of the claims alleged by the United States against IBP in the Complaint;

WHEREAS Defendant opposes the claims asserted by the United States and the State in the Complaint, and the parties

have numerous differing opinions as to matters of both fact and law.

WHEREAS, this Court on September 20, 2000 approved and entered a Partial Consent Decree for Interim Injunctive Relief addressing certain of the United States' Clean Air Act claims in this case;

WHEREAS, the State of Nebraska issued a National Pollutant Discharge Elimination System ("NPDES") permit, No. NE0001392, to IBP on May 31, 1995, pursuant to the Section 402 of the CWA, 33 U.S.C. § 1342 and Title 119 of the Nebraska Administrative Code, which remains in effect, subject to the Partial Stay issued by NDEQ on June 30, 1995, until such time as a new National Pollutant Discharge Elimination System ("NDPES") permit is issued to Defendant's Dakota City facility;

WHEREAS, IBP has committed to commence all necessary construction required by the Compliance Schedule to this Consent Decree, subject to obtaining any necessary approvals from NDEQ, prior to the entry of the Decree;

WHEREAS, the Parties agree, and this Court finds, that the instant Consent Decree has been negotiated by the Parties in good faith, that it complements the Partial Consent Decree previously entered in this case, and together with the Partial Consent Decree will fully and finally resolve this case and

thereby avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

WHEREAS, the Parties agree that by entering into this Consent Decree the Defendant has not admitted the truth of any allegation in the Complaint except the allegations pertaining to venue and subject matter and personal jurisdiction; and

WHEREAS, the Parties, without the necessity of trial or adjudication of any issues of fact or law, and without any admission of liability by the Defendant, consent to entry of the following Consent Decree resolving Plaintiffs' claims.

NOW, THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED THAT:

I. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in the CAA, the CWA, EPCRA, CERCLA and RCRA, or in regulations promulgated thereunder, shall have the meaning assigned to them in these statutes or their implementing regulations. Whenever terms listed below are used in this Consent Decree or in the documents attached to this Consent Decree or incorporated by reference into this Consent Decree, the following definitions shall apply:

a. "AOC" shall mean the Administrative Order on Consent entered into by EPA and the Defendant on or about April 27, 2000, including all Attachments thereto;

b. "Complaint" shall mean the Second Amended Complaint filed by the United States and the State of Nebraska in this action simultaneously with the lodging of this Consent Decree;

c. "Compliance Schedule" shall mean the Work required under this Consent Decree to be completed by IBP as set forth in Attachment A to this Consent Decree, including appendices thereto and incorporated plans, and any modifications thereto made in accordance with Section XXIV (Modification) of this Consent Decree;

d. "Consent Decree" shall mean this Second and Final Partial Consent Decree and all Attachments listed in Section XXIII, including Appendices thereto and incorporated plans, and any modifications thereto made in accordance with Section XXIV (Modification) of this Consent Decree.

e. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, federal or state holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, federal or state holiday, the period shall run until the end of the next Working day.

f. "Defendant" means the Defendant in this action, IBP inc.;

g. "Dakota City Facility" shall mean the property in Dakota City, Nebraska, on which is located Defendant's Slaughter Facility, Tannery Facility, and Wastewater Treatment Facility.

h. "DOJ" means the United States Department of Justice and any successor departments or agencies of the United States;

i. "EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States;

j. "Gibbon Facility" shall mean the property on which IBP formerly operated slaughter operations in Gibbon, Nebraska.

k. "Interest" shall mean interest at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. Such interest shall be compounded annually on October 1st of each year;

l. "NDEQ" shall mean the Nebraska Department of Environmental Quality, and its authorized representatives.

m. "Notify" and "Submit" and other terms signifying an obligation to transmit or communicate documents and information mean to deliver in-person, deposit in the United

States mail, or dispatch by express courier not later than the day that such transmission or communication is required by this Consent Decree. Should such day be a weekend day or a federal holiday, the delivery, deposit, or dispatch shall be due on the next business day. Response deadlines shall be calculated from the date of actual receipt of the document(s) requiring a response;

n. "Palestine Facility" shall mean the property on which IBP formerly operated slaughter operations in Palestine Texas.

o. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral, a letter of the alphabet or a lower case Roman numeral.

p. "Partial Consent Decree" shall mean the Partial Consent Decree for Interim Injunctive Relief entered into by EPA and the Defendant on or about September 20, 2000, including all Attachments thereto. All "Work" as defined in the Partial Consent Decree shall remain enforceable under the terms of the Partial Consent Decree in the District Court for the District of Nebraska.

q. "Parties" shall mean the United States, the State of Nebraska, and IBP, inc.

r. "Plaintiffs" shall mean the United States of America and the State of Nebraska;

s. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral;

t. "SEP" shall mean a Supplemental Environmental Project, as described in EPA's May 1, 1998 Supplemental Environmental Projects Policy;

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

v. "Task" shall mean a portion of the Compliance Schedule attached hereto as Attachment A that is identified by the word "Task" and an Arabic number;

w. "United States" shall mean the United States of America, acting on behalf of the Environmental Protection Agency (EPA).

x. "Work" shall mean all activities Defendant is required to perform under this Consent Decree, together with its Attachments, except those required by Section XVIII (Record Retention) of this Consent Decree.

II. JURISDICTION

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 325(b)(3) and 325(c)(4) of EPCRA, 42 U.S.C. §§ 11025(b)(3) and 11025(b)(3); Section 109(c) of CERCLA, 42 U.S.C. § 9609(c); Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1); Section 113(b) of the CAA (42 U.S.C. § 7413(b), Section 309(b) of the CWA, 33 U.S.C. § 1319(b); and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

This Court also has jurisdiction over the claims alleged by NDEQ as an agency of the State of Nebraska to enforce the citizen suit provisions of the Clean Air Act set forth at 42 U.S.C. §§ 7604 and 7602 and has pendent jurisdiction over claims asserted by NDEQ pursuant to Neb. Rev. Stat. § 81-1504 (1994). The Complaint filed herein states claims for which, if the allegations were proved, relief could be granted. This Court also has personal jurisdiction over the Defendant. Solely for the purposes of this Consent Decree, Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

3. Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of the Defendant with respect to all matters arising under or relating to this Consent Decree. Defendant hereby agrees to accept service in that manner 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.

III. PARTIES BOUND AND NOTICE OF TRANSFER

4. The provisions of this Consent Decree shall apply to and be binding upon the United States, the State, and IBP and its successor and assigns, and with respect to injunctive relief upon such other persons acting on IBP's behalf as required by Fed. R. Civ. P. 65(d). Each Party certifies that at least one of its undersigned representatives is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Decree, to execute it on behalf of that party, and to legally bind the party on whose behalf he or she executes this Consent Decree.

5. Unless otherwise agreed to by EPA, no change in ownership, corporate, or partnership status relating to the Dakota City Facility, or conveyance of title, easement, or other interest in the Dakota City Facility, including but not limited to any lease or transfer of assets or real or personal property, will alter the Defendant's obligation to comply with the requirements of this Consent Decree or to ensure compliance by any successor or assign of the Defendant, regardless of whether the Defendant continues to exist following the transaction. In the event that any such conveyance or lease of property at the Dakota City Facility will entail the usage by another person of portions of the Defendant's Dakota City Facility at which Work is to be

performed under this Consent Decree, then it shall be Defendant's obligation to require compliance by that person with the relevant portions of the Consent Decree, and to reserve the right to monitor compliance by that person. Defendant shall remain liable to EPA for any stipulated penalties that may accrue due to any non-compliance by that person. In all cases, it shall be Defendant's obligation with respect to any portion of the Dakota City Facility conveyed or leased to ensure access to property and information pursuant to Section VIII of this Consent Decree. Any deed, title, or other instrument of conveyance shall contain a notice that the Dakota City Facility is the subject of this Consent Decree, setting forth the case caption and index number, and the Court having jurisdiction.

6. In addition to any notification required by federal or state law, Defendant shall notify EPA and NDEQ at least ninety (90) days prior to a change in the operational and/or ownership control of any portion of Dakota City Facility, including but not limited to the conveyance of title, easement, or other interest, including a leasehold interest. This notice shall also include a description of both the current and expected future activities on that portion of the Dakota City Facility to be conveyed, leased, or otherwise

alienated. Defendant shall also provide a copy of this Consent Decree to the grantee prior to any such conveyance.

7. Defendant shall provide to each contractor hired to perform any of the Work (as defined above) required by this Consent Decree or its Attachments (and to each person representing the Defendant with respect to the Work), a copy of all Sections of this Decree and/or Attachments relevant to the contractor's employment, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree and its Attachments. Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Defendant nonetheless shall be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree, including document retention obligations under Section XVIII of this Consent Decree.

IV. GENERAL PROVISIONS

8. Compliance With Applicable Law: All activities undertaken by Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal, state and local laws, permits, and regulations.

9. Permits: Where any portion of the Work requires a federal, state, or local permit or approval, Defendant shall submit timely applications that comply with applicable federal, state or local law, and take all other actions necessary to obtain all such permits or approvals. This Consent Decree is not, and shall not be construed to be, a permit or a ruling or determination of any issue relating to any federal, state, or local permit, nor shall it preempt any federal, state or local permitting process.

10. The Defendant may seek relief under the provisions of Section XVI (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any authorization or permit required for the Work, provided that Defendant has used due diligence to obtain such authorization or permit.

V. CONTRACTORS/PROJECT COORDINATORS

11. Within ten (10) days after the date of IBP's execution of this Consent Decree, Defendant shall designate a Project Coordinator for the Dakota City Facility and shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. Defendant's Project Coordinator shall be in charge of the administration of all the actions required of Defendant by the Consent Decree at the Dakota City Facility, and shall be present at the Dakota

Facility or readily available by telephone during Dakota City Facility Work.

12. A Project Coordinator for the Palestine Facility is not required.

13. EPA has designated Kathryn Greenwald as its Project Coordinator for the Dakota City Facility.

14. NDEQ has designated Jim Yeggy as its Project Coordinator for the Dakota City Facility.

15. EPA, NDEQ and Defendant shall have the right to change their designated Project Coordinators and contractors. Verbal notice of such change shall be provided to the other parties within twenty-four (24) hours of such change and written notice shall follow within five (5) days of such change.

VI. PERFORMANCE OF THE WORK BY DEFENDANT

16. Defendant shall comply with the provisions, terms, and schedules set forth in the Compliance Schedule set forth in Attachment A, which is incorporated by reference into this Consent Decree.

17. If, prior to Defendant's Request for an Acknowledgment of Completion of the Compliance Schedule pursuant to Section XI of this Consent Decree, EPA determines that Defendant's performance of the Work is incomplete or inconsistent with the Compliance Schedule, EPA will notify

Defendant in writing of the activities that must be undertaken to complete the Work, and will set forth in the notice a period for Defendant to satisfactorily complete the Work. Defendant shall perform all activities described in the notice consistent with the Compliance Schedule in accordance with the specifications and schedules established therein.

VII. PERIODIC REPORTS AND MEETINGS

18. Defendant shall make presentations at and participate in meetings with EPA during normal business hours at the request of EPA to discuss the Work to be performed under this Consent Decree. In addition to discussion of the technical aspects of the Work, topics may include anticipated problems or new issues. NDEQ shall be invited to attend any meetings held pursuant to this Paragraph.

19. Within thirty (30) days after the end of each calendar month quarter (i.e. April 30, July 31, October 31, January 31) after lodging of this Consent Decree until Defendant's receipt of EPA's Acknowledgment of Completion of the Work, in accordance with Section XI (Completion of the Work) of this Consent Decree, Defendant shall submit in accordance with Section X (Notices) of this Consent Decree a quarterly Progress Report for the preceding quarter. These Progress Reports shall contain the following general

information, in addition to any information specifically required under Attachments A or B to this Consent Decree:

a. By Task and by Supplemental Environmental Project ("SEP"), as described in EPA's May 1, 1998 Supplemental Environmental Projects Policy, a description of the Work conducted pursuant to this Consent Decree during the reporting period and an estimate of the percentage of the Task completed;

b. A description of all Tasks and SEPs scheduled for completion during the reporting period which were not completed along with a statement indicating why such Tasks and SEPs were not completed and an anticipated completion date;

c. Copies of all data, monitoring, sampling and test results, and other laboratory deliverables relating to the Work to be performed under this Consent Decree and received by Defendant during the reporting period, and for which Defendant has completed quality assurance validation, and that has not already been provided to EPA under this Consent Decree; and

d. A description of the activities that are scheduled for the following reporting period.

VIII. ACCESS TO THE SITE AND TO INFORMATION

20. Commencing upon the date of lodging of this Consent Decree, Defendant agrees to provide the United States, NDEQ, the State of Texas and their representatives, including their

agencies, employees and authorized agents (including contractors and subcontractors), access at all reasonable times to the Dakota City Facility, and any other property owned or controlled by Defendant or accessible to Defendant by contract, to which access is required for the implementation of this Consent Decree, for purposes consistent with the United States' rights under this Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying and documenting any data or information submitted to the United States or NDEQ in accordance with the terms of this Consent Decree;
- c. Conducting investigations relating to the Work or Defendant's compliance with this Consent Decree;
- d. Obtaining samples relating to the Work;
- e. Inspecting and copying records, operating logs, contracts, or other documents that are maintained or generated by Defendant or its agents related to the Work or to Defendant's compliance with this Consent Decree, subject to Paragraphs 21 and 22, infra; and

Where feasible and appropriate, EPA will endeavor to provide advance notice to IBP of any need for access.

21. Defendant shall provide to EPA and NDEQ, upon request, and within a reasonable time, copies of all documents

and information within its possession or control or that of its contractors, subcontractors, agents, or lessees to which EPA and NDEQ are entitled to access under Paragraph 20.

Defendant, however, may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law.

In the event that Defendant withholds documents requested by EPA, or its authorized representatives on the basis of a claim of privilege, Defendant shall provide a written description of each document withheld that describes the original date and content of the document withheld and the basis on which the document is being withheld. Defendant shall redact and provide all requested non-privileged portions of documents that may be subject to a partial claim of privilege.

22. All data, information, and documents obtained by the Plaintiffs from or on behalf of the Defendant pursuant to this Consent Decree or its Attachments may be subject to public inspection unless identified and documented as confidential by the Defendant in conformance with 40 C.F.R. Part 2 and Neb. Rev. Stat. 81-1527, Neb. Rev. Stat. 84-712.05, and Neb. Rev. Stat. 27-508. The data, factual information, and documents so identified as confidential shall be disclosed only in accordance with appropriate EPA, DOJ and NDEQ regulations.

23. With respect to the Palestine Facility, an area to which access is needed to carry out the terms of this Consent Decree that is owned in whole or in part by a person other than Defendant, Defendant hereby represents that it has obtained site access agreement from the owner of such property and any others required to consent to such access, a copy of which is annexed to the Compliance Schedule as Appendix 2. This agreement provides access for EPA, its contractors and oversight officials, the State of Texas and its contractors, and Defendant and its authorized representatives. The agreement further specifies that Defendant is not EPA's representative with respect to any liability associated with site activities.

24. At the time of entering the Dakota City and Palestine Facilities, EPA and NDEQ employees and representatives shall present valid credentials or other official authorization. The Defendant shall have the right to accompany EPA and NDEQ representatives throughout their presence at the Dakota City and Palestine Facilities, and to monitor and document the investigative activities conducted by EPA and NDEQ, so long as such monitoring or documenting does not delay or impede the investigative activities of EPA or NDEQ. If any documentation of EPA's or NDEQ's investigatory activities is made by EPA, NDEQ, or the Defendant, a copy of

such documentation shall be provided to the other participants.

25. Defendant, upon request at the time of sampling, may obtain splits of any samples taken by EPA, NDEQ or their representatives, and, upon request, shall be provided with copies of the results of sampling, analysis, tests, or other raw data generated as a result of activities authorized under Paragraph 20 of this Consent Decree.

26. Notwithstanding any other provision of this Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under any applicable statutes, regulations or permits, and Defendant reserves its rights in opposition to such authorities and rights as set forth in Paragraph 72 of this Consent Decree.

IX. CERTIFICATIONS

27. Whenever this Consent Decree or its Attachments requires the Defendant to submit a work plan, design, study, report, or other document, it shall be signed and certified as accurate by a responsible corporate officer as defined in 40 C.F.R. § 270.11(a)(1), or his duly authorized representative. This certification shall include the following language:

I certify under penalty of law that this document and any attachments to it were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

X. NOTICES

28. Whenever under the terms of this Consent Decree notice is required to be given or a report or other document is required to be forwarded by one party to another, it shall be directed to the individuals and addresses specified in Paragraphs 29 and 30, below, unless otherwise specified by this Consent Decree. Any correspondence submitted to the United States or the State shall include a reference to the case caption and index number of this court action. Any changes in the person designated to send or receive such notice or in the address to which the notice is to be sent shall be provided to the other parties, in writing, in accordance with the requirements of this Section.

29. Any technical reports or data required to be submitted under this Consent Decree relating to the Dakota City Facility shall be submitted to:

EPA

Water, Wetlands, and Pesticides Division
EPA - Region VII
901 N. 5th St.
Kansas City, Kansas 66101
[one copy]

Kathryn Greenwald
U.S. EPA, Mail Code: 2243-A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
[three copies]

NDEQ

Division Administrator - Water Quality
Department of Environmental Quality
1200 N Street, The Atrium
P.O. Box 98922
Lincoln NE 68509-8922
[four copies]

Any technical reports or data required to be submitted under this Consent Decree relating to the Palestine Facility shall be submitted to:

EPA

Chief, NPDES Compliance Monitoring Section (6EN-W-C)
Water Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency VI
1445 Roth Avenue, Suite 1200
Dallas, Texas 75202

Kathryn Greenwald
U.S. EPA, Mail Code: 2243-A

1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
[two copies

30. Any other notifications or submissions shall be sent
to the persons named below:

As to the United States:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, D.C. 20005

Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. 5th St.
Kansas City, Kansas 66101

Director of Water Enforcement Division
U.S. Environmental Protection Agency
Mail Code: 2243-A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

As to NDEQ:

Legal Counsel to NDEQ
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922

Division Administrator - Water Quality
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922

As to the Defendant:

IBP, inc.
800 Stevens Port Drive
Dakota Dunes, South Dakota 57049
Attn: Legal Department

IBP, inc.
800 Stevens Port Drive
Dakota Dunes, South Dakota 57049
Attn: Engineering

Corporation Services Company
503 South Pierre Street
Pierre, South Dakota 57501

Or such other address as is provided by IBP to EPA and NDEQ in writing at the addresses specified in this section.

XI. COMPLETION OF THE WORK

31. Within ninety (90) days after Defendant concludes that all phases of the Work required under any Section of the Compliance Schedule have been fully performed, Defendant shall submit to EPA, with a copy to NDEQ, one or more written reports by registered professional engineers in the relevant technical fields, certifying in compliance with Section IX of this Consent Decree that the Work required by that portion of the Compliance Schedule has been completed in full satisfaction of its requirements. These reports shall indicate the case name and civil action number, and shall contain the following statement, signed by a responsible corporate official of Defendant:

To the best of my knowledge, after thorough investigation in accordance with a system

designed to assure that qualified personnel properly gather and evaluate the information submitted, I certify, based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, that IBP has completed in accordance with the Consent Decree the Work set forth in Section __ of the Compliance Schedule attached to the Consent Decree, and that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If EPA so requests, Defendant shall schedule and conduct an inspection of the Dakota City Facility, to be attended by Defendant and EPA, to review the certified portion of the Work. NDEQ also shall be invited to attend as to matters relating to the Dakota City Facility.

32. If, after review of the final written reports and certifications, a reasonable opportunity for review and comment by NDEQ as to matters relating to the Dakota City Facility, and any inspection, EPA determines that any portion of the certified Work is incomplete or inconsistent with the requirements of the Compliance Schedule, EPA will notify Defendant in writing of the activities that must be undertaken to complete this portion of the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Compliance Schedule, or will require

Defendant to submit a schedule to EPA for approval. Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution). Upon completion of these activities, Defendant shall submit revised written reports and certifications for the completed portion of the Work.

33. Within ninety (90) days of Defendant's completion of all the phases of the Work required under the Compliance Schedule, Defendant shall submit to EPA, with a copy to NDEQ as to matters relating to the Dakota City Facility, a Request for Acknowledgment of Completion of the Compliance Schedule, referencing all final written reports and certifications submitted pursuant to Paragraph 31, supra. Following its receipt of the Request, EPA may request an inspection or provide notice of activities that must be undertaken to complete the Work required under the Compliance Schedule, as set forth in Paragraph 32. If EPA concludes, based on the initial or any subsequent Request for an Acknowledgment of Completion of the Compliance Schedule by Defendant, and after a reasonable opportunity for review and comment by NDEQ as to matters relating to the Dakota City Facility, that the Work required under the Compliance Schedule has been performed in

accordance with this Consent Decree, EPA will so notify the Defendant in writing, which notice shall constitute the Acknowledgment of Completion of the Compliance Schedule. IBP and EPA may follow the same procedures set forth in this Paragraph to certify completion of a portion of the Work required under a discrete Section of the Compliance Schedule, in which case any corresponding Acknowledgment of Completion shall clearly specify which Section of the Compliance Schedule has been completed.

34. The requirements for completion of the SEPs to be performed under this Consent Decree are set forth in Attachment C, hereto. Following EPA's issuance of an Acknowledgment of Completion of the Compliance Schedule, its acceptance of all Final SEP Reports as set forth in Attachment C, the date on which IBP's new NPDES Permit becomes final, effective and no longer subject to review and appeal, and Defendant's payment of all penalties that may have accrued to that date under this Consent Decree, IBP shall request an Acknowledgment of Completion of the Work. If EPA agrees, after a reasonable opportunity for review and comment by NDEQ as to matters relating to the Dakota City Facility, that the above criteria have been met, EPA will so notify the Defendant in writing, which notice shall constitute the final Acknowledgment of the Completion of the Work.

XII. CIVIL PENALTY

35. Pursuant to the statutes named in the Complaint, the nature of the violations, Defendant's agreement to conduct a number of Supplemental Environmental Projects ("SEPs") with a net present value of at least \$3,400,000 (as set forth in Section XIII, infra, and Attachment C hereto), and other relevant factors, EPA has determined that an appropriate civil penalty to settle the claims alleged in the Complaint in this action is \$4,100,000, which Defendant has agreed to pay.

36. Within ten (10) working days of Defendant's receipt of notice of the entry of this Consent Decree with the Court, Defendant shall remit \$1,850,000 of the civil penalty to the State, and shall remit the balance of the civil penalty to the United States. Payment to the State shall be made by certified check payable to the Treasurer for Dakota County, Nebraska and submitted to the Office of the Attorney General, State of Nebraska, State Capitol, Room 2115, P.O. Box 98920, Lincoln, Nebraska, 68509-8920. Payment to the United States shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice lockbox bank at the Office of the United States Attorney for the District of Nebraska, referencing DOJ Numbers 90-11-3-06517, 06517/1, 06517/2, 06517/3, and 06517/4, and the U.S.A.O. file numbers 1999-00144, 1999-00145, and 1999-00146 (Dakota City) and 2000-00246 (Gibbon). Payment

shall be made in accordance with instructions provided by the United States to the Defendant upon execution of the Consent Decree. Any EFTs received at the U.S. D.O.J. lockbox bank after 4:00 P.M. (Eastern Time) will be credited on the next business day. Notice of the EFT and copies of any correspondence from Defendant to the United States Attorney shall be sent to the United States and EPA as provided in Section X (Notices) of this Decree.

37. In the event that the payment required by Paragraph 35 is not made in compliance with the terms of Paragraph 36, Defendant shall be subject to late charges by the United States in accordance with the Debt Collection Act of 1982, 31 U.S.C. § 3717 and 40 C.F.R. § 13.11. First, Defendant shall pay Interest on the unpaid balance at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. The Interest on the penalty shall begin to accrue on the 11th day following Defendant's receipt of notice of the entry of the Consent Decree, and shall continue to accrue at the rate specified through the date of payment. Such Interest shall be compounded each federal fiscal year. Second, Defendant shall pay a 6% per annum late fee on any principal amount not paid within ninety (90) days of the due date. Third, Defendant shall pay an administrative costs (handling) charge of fifteen dollars (\$15) for each month past the due

date specified by the Consent Decree that it does not pay the penalty in full. Payments of Interest, late fees and handling charges made under this Paragraph shall be in addition to stipulated penalties provided in Section XIV (Stipulated Penalties) or any other remedies or sanctions available to Plaintiffs by virtue of Defendant's failure to make timely payments under this Section. Payments made pursuant to this Paragraph shall be made in accordance with the procedures set forth in Paragraph 36.

38. No monetary payments made to the United States under this Section shall be tax deductible for federal or state tax purposes.

XIII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

39. Defendant shall implement two Supplemental Environmental Projects ("SEPs") designed to reduce the sulfur content in the wastewater treated by the WWTF and thereby reduce the potential for generating hydrogen sulfide by the WWTF (the "sulfur reduction SEP") and to reduce ammonia discharges from IBP's Dakota City Facility to the Missouri River (the "ammonia reduction SEP"), as further identified in Attachment C, hereto. Defendant shall implement these SEPs in accordance with the provisions and schedules set forth in Attachment C.

40. With respect to each SEP, Defendant certifies the truth and accuracy of each of the following:

a. That to the best of Defendant's knowledge, a reasonable and good faith estimate of the net present after-tax cost of the sulfur reduction SEP is approximately \$500,000 ; and a reasonable and good faith estimate of the net present after-tax cost of the ammonia reduction SEP is at least \$2,900,000;

b. That, as of the date of this Consent Decree, Defendant is not required to perform the specific tasks enumerated in Attachment C to this Consent Decree by any federal, state, or local law or regulation, nor is Defendant required to perform these tasks by agreement, grant, or as injunctive relief awarded in any other action in any forum; and

c. That Defendant has not already received, and is not currently negotiating to receive, credit in any other federal, state, or local enforcement action for either of the SEPs specified in Attachment C.

41. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP from the date of the lodging of this Decree shall include the following language: "This project was undertaken in connection with the settlement of an environmental

enforcement action, United States v. IBP inc., taken on behalf of the U.S. Environmental Protection Agency."

XIV. STIPULATED PENALTIES

42. Defendant shall be liable for stipulated penalties to the United States, as specified below, for failure to comply with the requirements of this Consent Decree, unless excused under Section XVI (Force Majeure). "Compliance" by Defendant shall include timely completion of the activities required by this Consent Decree, Attachments A and B of this Consent Decree, or any work plan, schedule, or other document approved by EPA pursuant to this Consent Decree. Stipulated penalties shall apply to violations of this Consent Decree occurring on or after the date of entry of this Consent Decree.

a. For failure to submit the Penalty pursuant to the terms of Section XII, Defendant shall pay stipulated penalties in the following amounts for each day during which the payment is not received:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 30th day	\$1,000
31st through 60th day	\$2,500
61st day and beyond	\$5,000

b. For failure to meet any implementation or construction deadline established pursuant to the Compliance

Schedule or Attachment C of this Consent Decree, the Defendant shall pay stipulated penalties in the following amounts for each day during which each violation continues:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 30th day	\$ 1,000
31st through 60th day	\$ 2,000
61st day through 90 th day	\$ 3,000
91 st day and beyond	\$ 7,500

c. For failure to comply with the ammonia interim discharge limits and whole effluent toxicity ("WET") monitoring requirements established pursuant to Attachment B to the Consent Decree the Defendant shall pay stipulated penalties in the following amounts for each day on which each violation of a daily maximum occurs, for each month during which each violation of a monthly average occurs, or for each WET violation:

1. Ammonia Discharge Violations

	<u>Penalty Per Violation Of Daily Maximum Limits</u>	<u>Penalty Per Violation Of Monthly Average Limits</u>
1st violation (of a specified limit)	\$1,000	\$ 2,000
2nd violation (of that same limit)	\$2,000	\$ 4,000

d. For failure to comply with the interim discharge limits and WET requirements pursuant to Attachment C to the Consent Decree after the new nitrification system becomes fully operational, pursuant to Paragraph 4(h) of the Compliance Schedule, the Defendant shall pay stipulated penalties in the following amounts for each day on which each violation of a daily maximum occurs, for each month during which each violation of a monthly average occurs, or for each WET violation:

1. Discharge Violations

	Penalty Per Violation Of Daily Maximum <u>Limits</u>	Penalty Per Violation Of Monthly <u>Average Limits</u>
1st violation (of a specified limit)	\$1,000	\$2,000
2nd violation (of that same limit)	\$2,000	\$4,000
3rd violation (of that same limit)	\$3,000	\$6,000
4 th violation (of that same limit) and any subsequent violations	\$7,000	\$15,000

For any violation that is equal to or greater than 300% of the effluent limit IBP shall be subject to an alternate penalty of \$13,000 \$35,000

2. WET Violations

	<u>Penalty Per Violation</u>
0.1 - 1.0 TU over limit	\$1,000
1.1 - 2.0 TU over limit	\$2,000
2.1 - 3.0 TU over limit	\$3,750
3.1 or more TU over limit	\$5,000

Failure to conduct a test required to assess compliance with an interim discharge or WET limit shall constitute a violation of the appropriate limit.

e. For failure to meet any document submittal deadline established in the Compliance Schedule or Attachment C, the Defendant shall pay stipulated penalties in the following amounts for each day during which each violation continues:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 30th day	\$500
31st through 60th day	\$1,000
61st day and beyond	\$2,500

43. All stipulated penalties begin to accrue on the day that performance is due or a violation occurs, and continue to accrue through the final day of all corrections of the noncompliance. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate

violations of this Consent Decree; provided, that the Plaintiffs cannot collect duplicative penalties for the same violation of the same requirement of this Consent Decree. Defendant shall notify EPA in writing of any failure to meet Consent Decree requirements for which stipulated penalties may be due, or to comply with Section XVIII of this Consent Decree (Record Retention), within ten (10) days of acquiring knowledge of such failure. EPA shall notify Defendant as soon as practicable of any alleged failure by Defendant to meet Consent Decree requirements for which stipulated penalties may be due. EPA reserves the right to demand payment of stipulated penalties upon a determination by EPA that a violation of this Consent Decree has occurred. However, penalties shall accrue as provided in Paragraphs 42 and 43, regardless of whether Defendant or the EPA has notified the other of a violation. EPA may, at its sole discretion, waive payment of any portion of the stipulated penalties that may have accrued pursuant to this Consent Decree.

44. The payment of penalties shall not alter in any way Defendant's obligation to complete the performance of the Work or SEPs required under this Consent Decree.

45. All penalties owed to the United States under this Section shall be due and payable within thirty (30) days of the Defendant's receipt from EPA of a demand for payment of

the penalties, unless Defendant invokes the Dispute Resolution procedures under Section XV (Dispute Resolution). All payments under this Section shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice lockbox bank at the Office of the United States Attorney for the District of Nebraska, referencing DOJ Numbers, 90-11-3-06517, 06517/1, 06517/2, 06517/3, and 06517/4, and the U.S.A.O. file numbers 1999-00144, 1999-00145, and 1999-00146 (Dakota City) and 2000-00246 (Gibbon). Notice of the EFT shall be provided in a letter stating the caption and docket number of this case and addressed to:

Chief, Civil Division
United States Attorney's Office
District of Nebraska
1600 Dodge Street, Suite 1400
Omaha, Nebraska 68102-1506

A copy of any correspondence from Defendant to the United States Attorney shall be sent to the United States and EPA as provided in Section X (Notices).

46. Penalties shall continue to accrue as provided in Paragraphs 42 and 43 during any dispute resolution period, but need not be paid if Defendant prevails in its dispute or until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, any accrued penalties determined to be owing shall be paid to the

United States within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owed to the United States within sixty (60) days of receipt of the Court's decision or order unless that decision is further appealed, in which case stipulated penalties may continue to accrue but shall be payable with sixty (60) days of receipt of the appellate Court's decision or order.

47. If Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as Interest. Defendant shall pay Interest on the unpaid penalties at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717, beginning on the date of demand made pursuant to Paragraph 43, and shall continue to accrue at the rate specified through the date of the Defendant's full payment. Such Interest shall be compounded each federal fiscal year.

48. The stipulated penalties set forth above are intended to be in addition to the rights reserved to the Plaintiffs in Section XIX (Covenant of Plaintiffs) of this Consent Decree. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the ability of

the Plaintiffs to seek other remedies or sanctions available by virtue of Defendant's violation(s) of this Consent Decree or of the statutes and regulations referenced herein.

49. No monetary payments made to the United States under this Section shall be tax deductible for federal or state tax purposes.

XV. DISPUTE RESOLUTION

50. The dispute resolution procedures provided by this Section shall be available to resolve all disputes arising under this Consent Decree. Any disputes between the State and Defendant arising under this Consent Decree shall be deemed to also include the United States. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations of the Defendant that have not been disputed by Defendant in accordance with this Section, and shall not be construed to grant or to foreclose to Defendant any right to dispute EPA or NDEQ decision-making on matters not arising under this Consent Decree that may be subject to administrative and/or judicial review under the Administrative Procedure Act, 5 U.S.C. § 701 et seq. ("APA"), or to any other federal or state laws.

51. The dispute resolution procedure required herein shall be invoked upon the giving of written notice by one of the Parties to another advising of a dispute pursuant to this

Section. The notice shall describe the nature of the dispute, and shall state the noticing Party's position with regard to such dispute. The Party receiving such a notice shall acknowledge receipt of the notice and the parties shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days from the receipt of such notice.

52. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the Parties. Such period of informal negotiations shall not extend beyond sixty (60) calendar days from the date of the first meeting between representatives of the Parties, unless the Parties' representatives agree to shorten or extend this period.

53. The United States reserves the right to contend that judicial review of any EPA action implicated by a dispute be conducted on the administrative record of agency action using the arbitrary and capricious standard, under the Administrative Procedures Act, 5 U.S.C. § 701 et seq., or be subject to deference to EPA as the federal agency charged with implementing and enforcing the statutes referenced in the Complaint in this matter. Defendant reserves its right to dispute the applicability of record review principles or the principle of agency deference. Judicial review of disputes

not accorded record review shall be governed by applicable principles of law and Defendant shall bear the burden of demonstrating by a preponderance of the evidence that its position should prevail.

54. In the event that the Parties to the dispute are unable to reach agreement during such informal negotiation period, the United States shall provide the Defendant with a written summary of its position regarding the dispute. The position advanced by the United States (or the State) shall be considered binding unless, within forty-five (45) calendar days of the Defendant's receipt of the written summary of the United States' position, the Defendant files with this Court a petition which describes the nature of the dispute. The United States shall respond to the petition within forty-five (45) calendar days of filing.

55. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Section may be shortened upon motion of one of the Parties to the dispute.

56. Notwithstanding any other provision of this Consent Decree, in dispute resolution, this Court shall not draw any inferences nor establish any presumptions adverse to either party as a result of invocation of this Section or the Parties' inability to reach agreement. The Court shall determine the applicable standard and scope of review for resolving the dispute.

57. As part of the resolution of any dispute submitted to dispute resolution, the Parties, by agreement, or this Court, by order, may, in appropriate circumstances, extend or modify the schedule for completion of Work under this Consent Decree to account for the delay in the Work that occurred as a result of dispute resolution. Defendant shall be liable for stipulated penalties for its failure thereafter to complete the Work in accordance with the extended or modified schedule.

58. If the dispute concerns the United States' refusal or failure to grant an Acknowledgment of Completion of the Work pursuant to Section XI (Completion of the Work), and Defendant prevails on the dispute, the Defendant may also move for termination of the Consent Decree as additional relief without regard to Section XXVIII (Effective and Termination Dates) so long as all penalties have been paid pursuant to Sections XIV (Civil Penalties) and XVI (Stipulated Penalties).

XVI. FORCE MAJEURE

59. Defendant shall perform the requirements of this Consent Decree within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's exercise of due diligence to fulfill the obligation. "Due diligence" means using diligent efforts to anticipate any potential force majeure event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay is minimized to the greatest extent possible. Such events do not include unanticipated or increased costs of performance, changed economic circumstances, or normal precipitation events.

60. Defendant shall notify EPA in writing within ten (10) days after it becomes aware of events which Defendant knows or should know constitute a force majeure. Such notice shall include an estimate of the anticipated length of delay, including any necessary demobilization and remobilization, a description of the cause of the delay and the measures taken or to be taken to minimize the delay, and an estimated

timetable for implementation of these measures. Defendant shall adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall constitute a waiver of Defendant's right to assert a force majeure.

61. If EPA determines that a delay has been or will be caused by a force majeure, the time for performance for that element of Work may be extended, upon written approval of EPA, for, a period equal to the delay resulting from such circumstances. Such an extension does not alter the schedule for performance or completion of other Work required by this Partial Consent Decree unless specifically provided by EPA in its written approval. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Defendant in writing of its decision.

62. If the Defendant elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted

under the circumstances, that due diligence was exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 59 and 60, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court, and any schedules affected by the force majeure event shall be adjusted as appropriate to compensate for the force majeure event.

XVII. INDEMNIFICATION

63. The United States and the State do not assume any liability by entering into this agreement. Defendant shall indemnify, save and hold harmless the United States and the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States and the State shall not be held out as parties to any contract entered into by or on behalf of Defendant in carrying out activities pursuant to this Consent Decree. Neither the

Defendant nor any such contractor shall be considered an agent of the United States or the State.

64. Defendant waives all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between Defendant and any person for performance of Work on or relating to the Dakota City Facility, including, but not limited to, claims on account of construction delays. In addition, Defendant shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Defendant and any person for performance of Work performed pursuant to this Consent Decree, including, but not limited to, claims on account of construction delays.

XVIII. RECORD RETENTION

65. In addition to complying with any record-keeping requirements under applicable law and regulations, Defendant shall, unless otherwise agreed by EPA in writing, preserve and maintain from the time of lodging of this Decree:

a. at least one legible copy of all reports required to be generated by Defendant under this Consent Decree, together with documentation, in either electronic or

hard copy form, of the research and data used to generate such reports or which otherwise demonstrate the performance of Defendant's obligations under this Consent Decree, until three (3) years after termination of this Consent Decree.

b. all documents and records in its possession or in the possession of its divisions, employees, agents, accountants, or contractors that relate in any way to the Work performed pursuant to the Tasks set forth in Attachment A or the requirements of Attachments B and C to this Partial Consent Decree, until one (1) year following EPA's Acknowledgment of Completion of the respective Task required under the Compliance Schedule, the termination of Attachment B, or EPA's acceptance of a Final SEP Report, as applicable, regardless of any corporate document retention policy to the contrary.

XIX. COVENANT OF PLAINTIFFS

66. In consideration of the Work and Supplemental Environmental Projects that will be performed and the penalties that will be paid by the Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 67 and 69, the United States and the State covenant respectively not to sue or to take administrative action against Defendant for: a) the civil claims specifically alleged by each of the Plaintiffs in the Complaint under the

CWA, the CAA, RCRA, EPCRA and CERCLA, and Nebraska Environmental Protection Act, Neb. Rev. Stat. 81-1501 et seq. through the date of the lodging of this Consent Decree;

b) civil claims that could be asserted for each violation of a discharge limit, monitoring or reporting requirement in IBP's 1995 NPDES Permit that occurs from the date of entry of this Consent Decree until completion of the first Winter season, as defined in IBP's NPDES permit, that occurs after such time as a new NPDES Permit for IBP's Dakota City Facility becomes final, effective and no longer subject to review or appeal, where there is a discharge limit, monitoring or reporting requirement set forth in Attachments B or C, as applicable, and when IBP is in compliance with that discharge limit, monitoring or reporting requirement; and c) civil claims that could be asserted from the date of entry of the Consent Decree based on the claim that IBP's wet rendering of off-site drop material (fat and bone) from its Norfolk Nebraska facility prior to the time that a new NPDES Permit for IBP's Dakota City Facility becomes final, effective and no longer subject to review or appeal constitutes a discharge not permitted under IBP's 1995 NPDES Permit and/or 33 U.S.C. § 1311, provided that IBP adheres to the conditions for such rendering provided to EPA and attached hereto as Attachment E, although such discharges remain subject to Attachments B or C

of this Consent Decree, as applicable, and all other limits and conditions of the 1995 NPDES Permit. If the new NPDES Permit becomes final, effective and no longer subject to review or appeal before the new nitrification system is placed into full operational status, as scheduled for July 29, 2003 under Paragraph 4(h) of Attachment A, then this covenant shall include claims for each violation of a discharge limit, monitoring or reporting requirement in the new NPDES permit through July 29, 2003, or any modification of that date under this Consent Decree, where there is a discharge limit, monitoring or reporting requirement set forth in Attachment B, and when IBP is in compliance with that discharge limit, monitoring or reporting requirement. This covenant not to sue is expressly conditioned upon the complete and satisfactory performance by Defendant of its obligations under this Consent Decree, including the Attachments hereto. This covenant becomes effective upon payment of the civil penalty and any interest required under Section XII of this Consent Decree, and is conditioned upon Defendant's adherence to its covenant not to sue as set forth in Section XX of this Consent Decree. This covenant not to sue extends only to the Defendant, including those persons bound by the Consent Decree under Paragraph 4, and does not extend to any other person.

67. The United States and the State retain all authority and reserve all rights to take any and all actions authorized by law to protect human health and the environment.

68. Nothing in this Consent Decree is intended either to create any rights in or grant any cause of action to any person not a party to this Consent Decree, or to release or waive any claim, cause of action, demand, or defense in law or equity that any party to this Consent Decree may have against any person(s) or entity not a party to this Consent Decree.

69. Except as provided in Paragraph 66, the Plaintiffs hereby reserve all statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, civil, criminal, or administrative, including those that may pertain to the Defendant's failure to comply with any of the requirements of this Consent Decree or of federal or state environmental laws.

XX. COVENANT OF THE DEFENDANT

70. Defendant hereby relinquishes its jurisdictional objections to the issuance of a PSD Permit for the Dakota City Facility, but reserves any and all rights to object to and/or contest the substantive requirements of any PSD Permit to be issued by NDEQ in response to Defendant's application. The issuance of a PSD permit based on the application filed with NDEQ on October 13, 2000 shall not establish as a matter of

fact or law whether or not future modifications of the Dakota City Facility will require a PSD permit.

71. Defendant shall not object to EPA's jurisdiction to issue a new NPDES Permit for the Dakota City Facility. Defendant nevertheless reserves any and all rights to object to and/or contest the substantive requirements of any NPDES Permit to be issued by EPA in response to Defendant's application; provided, however, that Defendant shall not assert any objections to those provisions of the new NPDES permit that govern the discharge of "reject water" from the sulfur pollution reduction SEP, as described in Attachment C, so long as those provisions do not impose obligations beyond those set forth in the draft permit attached hereto as Attachment D ("Draft Permit"), with respect to the discharge of reject water.

72. Except as provided in Paragraphs 70 and 71, IBP reserves any defenses or arguments that may be available to it in resisting or defending against any action or proceeding that may be brought by the United States or the State under any of the rights or authorities reserved by the Plaintiffs under this Consent Decree or otherwise.

XXI. COSTS

73. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Decree.

XXII. COLLATERAL USE OF THIS CONSENT DECREE

74. Notwithstanding any provision of this Consent Decree, nothing herein shall be construed as an admission by Defendant of liability, assertion of fact, or conclusion of law. Specifically, Defendant does not admit any liability to EPA, the United States, the State, or any other person arising out of or relating to any IBP facility or the matters described in the Complaint. None of the provisions of this Consent Decree, nor the fact of its entry, shall be admissible in evidence by any Party in any proceeding other than in a proceeding to enforce this Consent Decree or any judgment related to it.

XXIII. ATTACHMENTS

75. The following Attachments are physically attached to and incorporated into this Consent Decree: "Attachment A" is the Compliance Schedule; "Attachment B" is the Interim Discharge, Monitoring and Reporting Requirements; Attachment C is the requirements for Supplemental Environmental Projects to be undertaken by Defendant; Attachment D is the Draft NPDES Permit dated October 9, 2001; and Attachment E sets forth the conditions for wet rendering of off-site drop material. Any

Appendices to these Attachments, and plans specifically identified in these Attachments and Appendices as incorporated by reference, are also enforceable under this Consent Decree.

XXIV. MODIFICATION

76. Except as specifically provided for herein, there shall be no modifications or amendments of this Consent Decree without written agreement of the Parties to this Consent Decree and approval by this Court. Changes to the technical and schedule provisions set forth in the Attachments hereto, may be made without approval by the Court under the terms set forth in the respective Attachments, or upon written agreement between the Defendant and EPA.

XXV. EFFECTIVE AND TERMINATION DATES

77. This Consent Decree shall be effective upon the date of its entry by the Court. The Compliance Schedule attached hereto as Attachment A, or any Task required thereunder, shall terminate upon EPA's issuance of an Acknowledgment of Completion of the Compliance Schedule or any specific Task. Attachment B shall terminate on the date that the new nitrification system becomes fully operational in accordance with Paragraph 4(h) of Attachment A, and each Section of Attachment C shall terminate upon EPA's approval of the Final SEP Report required under each Section of Attachment C. Provided that all penalties are paid pursuant to Sections

XII(Civil Penalty) and XIV (Stipulated Penalties) of this Consent Decree, the Consent Decree shall be terminated upon joint motion of the parties following EPA's issuance of the Acknowledgment of Completion of the Work pursuant to Section XI of this Consent Decree, except for the requirements of Section XVIII (Record Retention) which shall terminate pursuant to the terms of that Section.

78. The Parties may move jointly to terminate this Consent Decree based on their representation that all its requirements have been satisfied, and the Court may order such termination after conducting such inquiry as it deems appropriate.

XXVI. RETENTION OF JURISDICTION

79. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Defendant for the duration of the performance of the terms and provisions of this Consent Decree, including its Attachments, for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XV (Dispute Resolution) hereof.

80. The Parties retain the right to seek to enforce the terms of this Consent Decree and take any action authorized by federal or state law not inconsistent with the terms of this Consent Decree to achieve or maintain compliance with the terms and conditions of this Consent Decree or otherwise.

XXVII. PUBLIC NOTICE REQUIREMENTS

81. This Consent Decree shall be lodged with the Court for a period of not less than thirty (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 that indicate that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Consent Decree without further notice.

82. If, for any reason, the Court should decline to approve this Consent Decree in the form presented, then this agreement is voidable at the discretion of either party, and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

SO ORDERED THIS ___DAY OF _____, 2001.

United States District Judge

FOR THE UNITED STATES OF AMERICA

Date: _____

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Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

DEBORAH M. REYHER
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

MICHAEL G. HEAVICAN
United States Attorney
District of Nebraska

By: _____
SALLY JOHNSON
Civil Chief
U.S. Attorney's Office
District of Nebraska

Date: _____

SYLVIA K. LOWRANCE
Acting Assistant Administrator
for Enforcement & Compliance
Assurance
U.S. Environmental Protection
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1200 Pennsylvania Avenue, N.W.
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ALAN J. MORRISSEY
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Date: _____

JAMES B. GULLIFORD
Regional Administrator
Region VII
U.S. Environmental Protection
Agency

HOWARD BUNCH
Assistant Regional Counsel
Region VII
U.S. Environmental Protection
Agency

Date: _____

GREGG A. COOKE
Regional Administrator
Region VI
U.S. Environmental Protection
Agency

CHERYL BOYD
Assistant Regional Counsel
Region VI
U.S. Environmental Protection
Agency

FOR THE STATE OF NEBRASKA

DON STENBERG, #14023
Attorney General

Date: _____

By: _____
WILLIAM L. HOWLAND #11941
Assistant Attorney General

FOR IBP, inc.

Date: _____

SHEILA B. HAGEN
Executive Vice President and
General Counsel

Agent Authorized to Accept Service on Behalf of IBP

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Title: Registered Agent for IBP, inc.

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101**

**AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. §1251 et seq; the "Act"), **IBP, Inc.**, is authorized to discharge from the its wastewater treatment facility located approximately 1 mile northeast of Dakota City, Nebraska, in the south half of Section 3, Township 28 North, Range 9 East, Dakota County, to the Missouri River in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein. Authorization for discharge is limited to those outfalls specifically listed in the permit.

This permit shall become effective **[Date to be determined upon issuance]**

This permit and the authorization to discharge shall expire at midnight, **[Upon issuance, enter date for five year permit]**

Signed this _____ day of _____, 2001

U. Gale Hutton, Director
Water, Wetlands, and Pesticides Division

TABLE OF CONTENTS

Cover Sheet--Issuance and Expiration Dates

- I. Effluent Limitations and Monitoring Requirements
 - A. Definitions
 - B. Description of Discharge Points
 - C. Specific Limitations and Self-Monitoring Requirements
(Includes Compliance Schedules as Appropriate)
 - 1. Effluent Limitations Outfall 001- Effective immediately
 - 2. Effluent Limitations Outfall 001 - Effective when the permittee is treating the wastewater from BPI, Technology, Inc., but tannery not expanded.
 - 3. Effluent Limitations Outfall 001 - Effective upon expansion of tannery and the permittee is treating the wastewater from BPI, Technology, Inc.
 - 4. Effluent Limitations Outfall 001 - Effective upon expansion of tannery, but the permittee is not treating the wastewater from BPI, Technology, Inc.
 - 5. Self-Monitoring Requirements Outfall 001
 - 6. Effluent Limitations Outfall 002 - Effective upon construction and operation of Reverse Osmosis Unit
 - 7. Self Monitoring Requirements Outfall 002
 - 8. Whole Effluent Toxicity Testing - Acute Toxicity
 - 9. Groundwater Monitoring
 - 10. Sludge Management Plan
- II. Standard Conditions
 - A. General Conditions
 - B. Operation and Maintenance or Pollution Controls
 - C. Monitoring and Records
 - D. Reporting Requirements
 - E. Reopener Provisions

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**A. Definitions.**

1. The "30-day (and monthly) average," other than for fecal coliform bacteria and total coliform bacteria, is the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. Geometric means shall be calculated for fecal coliform bacteria and total coliform bacteria. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.
2. "Daily Maximum" ("Daily Max.") is the highest allowable discharge during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of pollutants discharged over the calendar day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the calendar day. If only one measurement or sample is taken during the calendar day, that will be considered the average for the calendar day.
3. "Composite samples" shall be flow proportioned. The composite sample shall, as a minimum, contain at least four (4) samples collected over the compositing period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six (6) hours nor more than 24 hours. Acceptable methods for preparation of composite samples are as follows:
 - a. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;
 - b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;
 - c. Constant sample volume, time interval between samples proportional to flow (i.e., sample taken every "X" gallons of flow); and,
 - d. Continuous collection of sample, with sample collection rate proportional to flow rate.
4. A "grab" sample, for monitoring requirements, is defined as a single "dip and take" sample collected at a representative point in the discharge stream.
5. An "instantaneous" measurement, for monitoring requirements, is defined as a single reading, observation, or measurement.
6. "Director" means the Director, Water, Wetlands, and Pesticide Division of EPA Region VII.
7. The "Permitting Authority" for this permit is the Director, Water, Wetlands, and Pesticide Division of EPA Region VII.
8. "EPA" means the United States Environmental Protection Agency, Region VII.
9. "Biological Sludge" for the purposes of this permit is any solid, semi-solid or liquid residue generated during the biological treatment of wastewater at this facility (e.g., waste activated sludge) or removed from the biological treatment system..

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**A. Definitions (Continued)**

10. "BPI Technology, Inc." means the company that is located adjacent to the permittee's Dakota City facility and that processes edible rendering material from the permittee's Dakota City facility and possibly other sources.
11. "Act" or "CWA" means the Clean Water Act, as amended, (formerly referred to as the Federal Water Pollution Control Act) 33 U.S.C. 1251 et seq.
12. A "calendar day" is defined as the period from midnight of one day until midnight of the next day. However, for purposes of this permit, any consecutive 24-hour period that reasonably represents the calendar day may be used for sampling.
13. A "hazardous substance" means any substance(s) designated under 40 C.F.R. Part 116 pursuant to the CWA Section 311, 33 U.S.C. § 1321.
14. A "toxic" or "priority" pollutant is one of 126 substances listed as toxic under the CWA Section 307(a)(1), 33 U.S.C. § 1317(a)(1).

B. Description of Discharge Point(s)

The authorization to discharge provided under this permit is limited to those outfalls specifically designated below as discharge locations. Discharges at any location not authorized under an NPDES permit is a violation of the Clean Water Act and could subject the person(s) responsible for such discharge to penalties under Section 309 of the Act. Knowingly discharging from an unauthorized location or failing to report an unauthorized discharge within a reasonable time from first learning of an unauthorized discharge could subject such person to criminal penalties as provided under the Clean Water Act.

Outfall**Serial Number(s)****Description of Discharge Point(s)****001**

The outfall line following the last wastewater treatment unit and the Parshall flume. The discharge is to the Missouri River.

002

The outfall line from the reverse osmosis unit to the storm sewer for the City of Dakota City which then, in turn, discharges to the Missouri River.

C. Specific Limitations and Self-Monitoring Requirements**1. Effluent Limitations - Outfall 001 - Effective Immediately**

Effective immediately, the quality of effluent discharged by the facility shall, as a minimum, meet the limitations as set forth below:

Pollutant	Effluent Limitations	
	30-Day Average <u>a/</u>	Daily Maximum <u>a/</u>
BOD ₅ , Kg/Day	1097	2227
Total Suspended Solids, Kg/Day	1565	3211
Oil and Grease, Kg/Day	448	926
Chromium, Total, Kg/Day	4.9	13.1
Ammonia (as N), mg/L		
May 1 through October 31	37.5	75
November 1 through April 30	75	150
Ammonia (as N), Kg/Day		
May 1 through October 31	640	1564
November 1 through April 30	1280	3128
Fecal Coliform, Colonies/100 mL		
May 1 through September 30	200	400
October 1 through April 30	N/A	400
Whole Effluent Toxicity, Acute Toxicity Units		
March 1 through October 31	N/A	12.8
November 1 through February 28/29	N/A	8.5
The concentration of total residual chlorine shall not exceed 0.10 mg/L in any single sample or analysis.		
The pH of the effluent shall not be less than 6.5 nor greater than 9.0 in any single sample or analysis.		

a/ See Definitions, Part I.A. for definition of terms.

C. Specific Limitations and Self-Monitoring Requirements**2. Effluent Limitations - Outfall 001 - Effective after notice to EPA - BPI, Technology, Inc., connected to the permittee's wastewater treatment system.**

The effluent limitations given below are based on the wastewater from BPI, Technology, Inc., being treated by the permittee. The permittee shall notify the permit issuing authority of the date when it will start treating the wastewater from BPI, Technology, Inc. Effective upon written notification by the permit issuing authority, the quality of effluent discharged by the facility shall, as a minimum, meet the limitations as set forth below:

Pollutant	Effluent Limitations	
	30-Day Average <u>a/</u>	Daily Maximum <u>a/</u>
BOD ₅ , Kg/Day	1381	2794
Total Suspended Solids, Kg/Day	2131	4345
Oil and Grease, Kg/Day	448	926
Chromium, Total, Kg/Day	4.9	13.1
Ammonia (as N), mg/L		
May 1 through October 31	37.5	75
November 1 through April 30	75	150
Ammonia (as N), Kg/Day		
May 1 through October 31	697	1735
November 1 through April 30	1394	3469
Fecal Coliform, Colonies/100 mL		
May 1 through September 30	200	400
October 1 through April 30	N/A	400
Whole Effluent Toxicity, Acute Toxicity Units		
March 1 through October 31	N/A	11.3
November 1 through February 28/29	N/A	7.5
The concentration of total residual chlorine shall not exceed 0.10 mg/L in any single sample or analysis.		
The pH of the effluent shall not be less than 6.5 nor greater than 9.0 in any single sample or analysis.		

a/ See Definitions, Part I.A. for definition of terms.

C. Specific Limitations and Self-Monitoring Requirements**3. Effluent Limitations - Outfall 001 - Effective after notice to EPA - When BPI, Technology, Inc is connected to the permittee's wastewater treatment system and the tannery has been expanded.**

The effluent limitations given below are based on both expansion of the tannery, as described in the permit renewal application, and obtaining operational status and the permittee treating the wastewater from BPI, Technology, Inc. The permittee shall notify the permit issuing authority when both of those events will occur. Effective upon written notification by the permit issuing authority, the quality of effluent discharged by the facility shall, as a minimum, meet the limitations as set forth below:

Pollutant	Effluent Limitations	
	30-Day Average <u>a/</u>	Daily Maximum <u>a/</u>
BOD ₅ , Kg/Day	1503	3056
Total Suspended Solids, Kg/Day	2303	4728
Oil and Grease, Kg/Day	498	1041
Chromium, Total, Kg/Day	7.4	19.6
Ammonia (as N), mg/L		
May 1 through October 31	37.5	75
November 1 through April 30	75	150
Ammonia (as N), Kg/Day		
May 1 through October 31	747	1877
November 1 through April 30	1493	3470 <u>b/</u>
Fecal Coliform, Colonies/100 mL		
May 1 through September 30	200	400
October 1 through April 30	N/A	400
Whole Effluent Toxicity, Acute Toxicity Units		
March 1 through October 31	N/A	10.3
November 1 through February 28/29	N/A	6.8
The concentration of total residual chlorine shall not exceed 0.10 mg/L in any single sample or analysis.		
The pH of the effluent shall not be less than 6.5 nor greater than 9.0 in any single sample or analysis.		

a/ See Definitions, Part I.A. for definition of terms.

b/ Water quality based

C. Specific Limitations and Self-Monitoring Requirements**4. Effluent Limitations - Outfall 001 - Effective after notice to EPA -Upon expansion of tannery, but the wastewater from BPI, Technology, Inc., not being treated by the permittee.**

The effluent limitations given below are based on expansion of the tannery, as described in the permit renewal application, and obtaining operational status. The permittee shall notify the permit issuing authority of the date when the expansion of the tannery will be completed and the new part of the operation has started. Effective upon written notification by the permit issuing authority, the quality of effluent discharged by the facility shall, as a minimum, meet the limitations as set forth below:

Pollutant	Effluent Limitations	
	30-Day Average <u>a/</u>	Daily Maximum <u>a/</u>
BOD ₅ , Kg/Day	1220	2489
Total Suspended Solids, Kg/Day	1736	3595
Oil and Grease, Kg/Day	498	1041
Chromium, Total, Kg/Day	7.4	19.6
Ammonia (as N), mg/L		
May 1 through October 31	37.5	75
November 1 through April 30	75	150
Ammonia (as N), Kg/Day		
May 1 through October 31	690	1706
November 1 through April 30	1379	3412
Fecal Coliform, Colonies/100 mL		
May 1 through September 30	200	400
October 1 through April 30	N/A	400
Whole Effluent Toxicity, Acute Toxicity Units		
March 1 through October 31	N/A	11.5
November 1 through February 28/29	N/A	7.6
The concentration of total residual chlorine shall not exceed 0.10 mg/L in any single sample or analysis.		
The pH of the effluent shall not be less than 6.5 nor greater than 9.0 in any single sample or analysis.		

a/ See Definitions, Part I.A. for definition of terms.

C. Specific Limitations and Self-Monitoring Requirements**5. Self-Monitoring Requirements - Outfall 001**

As a minimum, upon the effective date of this permit, the following constituents shall be monitored at the frequency and with the type of measurement indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge.

Pollutant (STORET Code)	Monitoring Requirements	
	Frequency	Sample Type <u>a/</u>
Flow, MGD <u>b/</u> (50050)	Continuous <u>b/</u>	Recorder <u>b/</u>
BOD ₅ , Kg/Day (00310)	3/Week	24-Hour Composite
Total Suspended Solids, Kg/Day (00530)	3/Week	24-Hour Composite
Oil and Grease, Kg/Day (00550)	3/Week	Grab
Chromium, Total, Kg/Day (01034)	Weekly	24-Hour Composite
Ammonia (as N), mg/L (00610)	3/Week	24-Hour Composite
Total Residual Chlorine, mg/L (50060)	3/Week	Grab
Fecal Coliform, Col/100 mL <u>c/</u> (31615)	3/Week	Grab
pH, s.u. (00400)	3/Week	Grab
Total Sulfides (as S), mg/L (00745)	Weekly	Grab
Whole Effluent Toxicity, Acute Toxicity Units Ceriodaphnia, (61425) Fathead Minnows (61427)	Quarterly <u>d/</u>	24-Hour Composite

a/ See Definitions, Part I.A. for definition of terms.

b/ Flow measurements of effluent volume shall be made in such a manner that the permittees can affirmatively demonstrate that representative values are being obtained. The average flow rate (in million gallons per day (MGD)) during the reporting period and the daily maximum flow (maximum volume, in million gallons, discharged during a 24-hour period) shall be reported.

c/ The membrane filter method may be used for determination of fecal coliform concentrations, but the Most Probable Number (MPN) method will be required to resolve any controversies.

d/ For Whole Effluent Toxicity monitoring purposes, quarters are defined as December through February, March through May, June through August, and September through November.

C. Specific Limitations and Self-Monitoring Requirements**6. Effluent Limitations 0 Outfall 002 - Effective upon construction and operation of the Reverse Osmosis Unit**

Only wastewater from the Reverse Osmosis Unit may be discharged through Outfall 002.

7. Self-Monitoring Requirements - Outfall 002

As a minimum, upon the effective date of this permit, the following constituents shall be monitored at the frequency and with the type of measurement indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge.

Pollutant (STORET Code)	Monitoring Requirements	
	Frequency	Sample Type <u>a/</u>
Flow, MGD <u>b/</u> (50050)	Continuous <u>b/</u>	Recorder <u>b/</u>
Total Suspended Solids, mg/L (00530)	Weekly	24-Hour Composite
Total Dissolved Solids, mg/L (70296)	Weekly	24-Hour Composite
Conductivity, μ mhos (00094)	Weekly	24-Hour Composite
pH, s.u. (00400)	3/Week	Grab
Whole Effluent Toxicity, Acute Toxicity Units Ceriodaphnia, (61425) Fathead Minnows (61427)	Annually	24-Hour Composite

a/ See Definitions, Part I.A. for definition of terms.

b/ Flow measurements of effluent volume shall be made in such a manner that the permittees can affirmatively demonstrate that representative values are being obtained. The average flow rate (in million gallons per day (MGD)) during the reporting period and the daily maximum flow (maximum volume, in million gallons, discharged during a 24-hour period) shall be reported.

8. Whole Effluent Toxicity (WET) Testing - Acute Toxicity

- a. Permittee will conduct concurrent, acute static renewal tests – 48 hour using fathead minnows and *Ceriodaphnia dubia* – according to applicable EPA protocols contained in 40 C.F.R. Part 136, and test conditions below. The concurrent tests will be conducted using the same effluent samples and renewed at the same frequency, and test temperature (20 degrees C). The test sample must be renewed no less frequently than every 24 hours. The sample shall not be further dechlorinated or manipulated prior to shipping and WET laboratory testing. The sample must be collected in an iced sampler and shipped overnight, on ice, to the WET testing lab. A minimum of six (6) effluent concentrations (100%, 40%, 20%, 10%, 5%, 2.5%), and a control are to be used to determine a definitive LC50 for each test. Four (4) test replicates are to be provided for each concentration and the control. Dilution of samples will be done with moderately hard reconstituted water as per EPA's acute manual.

C. Specific Limitations and Self-Monitoring Requirements

- b. WET testing requirements and conditions:
 - i. all samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity;
 - ii. Permittee shall use EPA approved methods from 40 CFR Part 136 or latest revisions thereof;
 - iii. all QA/QC measures must be met as specified in EPA approved methods;
 - iv. samples must be collected and analyzed for pH, temperature, hardness, alkalinity, conductivity, dissolved oxygen (DO), total residual chlorine (TRC), total ammonia, total Kjeldahl nitrogen (TKN), nitrate, and nitrite (pH, temperature, DO and TRC should be analyzed at time of sampling and prior to testing in laboratory. Measurements are to be made on aliquots removed from the composite sample);
 - v. during the WET test, the following parameters will be monitored for each test concentration at each renewal: temperature at 0 hours (initial) and 24 hours later (final), pH (initial and final), DO (initial and final), conductivity (initial), ammonia (initial on each new composite sample), and TRC (initial) on each new composite sample;
 - vi. all 24-hour composite samples are to be proportional to flow and describe method in reports;
 - vii. start days of all tests should be staggered to ensure that testing accounts for peak production periods;
 - viii. WET test results should be reported in terms of LC50 and TUa; and
 - ix. all chemical and WET test results, raw data, and statistical analyses are to be submitted under the provisions of Section II. D.4 of this Permit;
- c. For WET test results to be acceptable, control survival must equal or exceed 90%. Test volume, temperature range and test conditions must follow the most current EPA acute toxicity test method. Initial chemical concentrations should be measured at the start of the test, and periodic measurements should be made daily on one tank for each concentration.
- d. WET test shall be started early enough in the month to ensure that testing is completed in the month that it was initiated (e.g, February testing will be completed within February and not carry over to March).
- e. An effluent sample shall be collected for each testing period and shall be analyzed for the following ion concentrations in the final effluent: four major cations, Ca²⁺, Mg²⁺, Na⁺, and K⁺ and the four major anions HCO₃⁻, CO₃²⁻, SO₄²⁻, and Cl⁻. Level of detection must be reported.
- f. IBP shall submit a report as part of the monthly reporting required under Part II(D)(4) of this permit. The reporting is due within 30 days from termination of the last toxicity test for that test period. The report shall include a running summary of results presented in table format as well as a description of each test conducted (including when and how sample was renewed, source and feeding of test organisms, etc.). Raw test data submitted will include a summary of the pH range (initial to final) for each test concentration; and

C. Specific Limitations and Self-Monitoring Requirements

- g. Any single violation of the WET limit is a violation of this permit.
- h. If WET limits are exceeded, the Permittee shall, within five working days of receipt of sample results from the testing lab, provide a written notification to the Permitting Authority which includes a copy of the test report and a description of steps taken to reduce the toxicity of the effluent.
- i. If toxicity is persistent in three toxicity tests, the Permitting Authority may, at its discretion, direct the Permittee to prepare a plan and schedule for conducting a Toxicity Reduction Evaluation and a Toxicity Reduction Evaluation (TIE/TRE). Unless the Permitting Authority disapproves the plan within 30 days, the Permittee shall proceed with the TIE/TRE. Work on the TIE/TRE will not excuse WET violations which occur while the TIE/TRE process is proceeding. The TIE/TRE will be considered complete when activities included in the approved plan are complete and WET effluent limits are met consistently.

9. Groundwater Monitoring Requirements

The Permittee shall comply with the groundwater monitoring requirements as set forth in Nebraska Modified Construction Permit No.00-055A, dated June 29, 2000.

10. Sludge Management Plan

- a. The Permittee shall comply with its Sludge Management Plan dated _____, 2001, **[NOTE: final plan to be complete and attached to the Fact Sheet with the proposed permit]** during the effective period of this permit.
- b. The Permittee shall notify the Permitting Authority, in advance if possible, of any significant changes in sludge management practices, and upon direction of the Permitting Authority, shall modify the Sludge Management Plan and resubmit it to the Permitting Authority in writing. Unless otherwise notified by the Permitting Authority within 45 days of receipt, the revised Sludge Management Plan shall become effective under this permit.

STANDARD CONDITIONS**A GENERAL CONDITIONS****1. Duty to Comply**

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Toxic Pollutants And Sewage Sludge

The Permittee shall comply with effluent standards or prohibitions established under the CWA Section 307(a), 33 U.S.C. §1317(a), for toxic pollutants and, to the extent applicable, with standards for sewage sludge use or disposal established under the CWA Section 405(d), 33 U.S.C. § 1345(d), within the time provided in the regulations that establish those standards or prohibitions, or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

3. Penalties for Violations of Permit Conditions

The Act provides that any person who violates Sections 301, 302, 306, 307, 308 or 405 of the Act , or any permit condition or limitation implementing such Sections in a permit issued under Section 402 of the Act, is subject to civil penalties not to exceed \$27,500 per day for each violation under Section 309 of the Act. Any person who willfully or negligently violates Sections 301, 302, 306, 307, or 308 of the Act, or any permit condition or limitation implementing such Sections, may be subject to a fine or imprisonment pursuant to Section 309(c) of the Act. Except as provided in sections II-B-3, Bypass of Treatment Facilities, and II-B-4, Upset, of this permit, nothing in this permit shall be construed to relieve the Permittee of civil or criminal liability for noncompliance.

4. Duty to Reapply

- a. If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The Permittee shall submit a new application to the Nebraska Department of Environmental Quality (NDEQ), at least 180 days before the expiration date of this permit.
- b. The terms and conditions of this permit continue in force under 5 U.S.C. § 558 (c) until the effective date of the new permit (or permit denial) only if the Permittee has submitted a timely and complete application under 40 C.F.R. § 122.21 for a renewal permit and the Permitting Authority, through no fault of the Permittee, does not issue a new permit (or deny the permit) before the expiration date of this permit. The permit continued under 5 U.S.C. § 558(c) remains fully effective and enforceable, subject to the actions set forth in 40 C.F.R. § 122.6(c).

5. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

6. Permit Actions (Modifications, Revocation and Reissuance, or Termination)

- a. This permit may be modified, revoked and reissued, or terminated for causes (as described in 40 C.F.R. §§ 122.62, 122.63, and 122.64), including, but not limited to: violation of any terms or conditions of this permit; obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- b. Notwithstanding Part II-A-6-(a), above:
 - i. If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under the CWA Section 307(a) for a toxic pollutant that is present in the discharge and such standard or prohibition is more stringent than any other limitation for such pollutant in this permit, this permit may be modified or revoked and reissued to conform to the toxic effluent standards or prohibition; and
 - ii. If more stringent water quality standards for the state of Nebraska become effective pursuant to CWA Section 303(c), 33 U.S.C. § 1313 (c), than the water quality standards in effect upon issuance of this permit, this permit may be modified or revoked and reissued to conform with the such new water quality standard.

7. Effect of Permit/Other Laws

- a. Issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to persons, or property, or invasion of other private rights, or any infringement of federal, state, or local laws or regulations.
- b. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by the CWA Section 510.
- c. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject to under the CWA Section 311 or the Comprehensive Environmental Responses, Compensation and Liability Act (CERCLA) of 1998 Section 106.
- d. Except as provided in permit conditions on Upsets, Part II-B-4, below, nothing in this permit shall be construed to relieve the Permittee from civil or criminal penalties for noncompliance with a permit condition.
- e. Pursuant to the CWA Section 509(b)(2), 33 U.S.C. § 1369(b)(2), a challenge to the validity of permit conditions, including the effluent limitations in Part I-A of this permit, shall not be a defense to an enforcement action under the CWA Sections 309 or 505, 33 U.S.C. § §1319 or 1365. Each any every violation of a permit condition is subject to an enforcement action.
- f. Compliance with the terms of this permit does not constitute a defense to any action brought under the CWA Section 504, 33 U.S.C. § 1364, or any other law governing protection of public health or welfare, for any imminent and substantial endangerment to public health or welfare.

8. Inspection and Entry

The Permittee shall allow the Permitting Authority and the NDEQ, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purpose of ensuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

9. Severability

The provisions of this permit are severable, and if any provision of the permit, or application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back up or auxiliary facilities or similar systems that are installed by a Permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce Not a Defense

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Bypass of Treatment Facilities

a. Definitions

- i. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
- ii. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that renders them inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass Not Exceeding Limitations

The Permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Parts c and d of this section.

c. Notice

- i. Anticipated bypass. If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 30 days before the date of the bypass; including an evaluation of the anticipated quantity, quality and effect of the bypass.
- ii. Unanticipated bypass. The Permittee shall submit notice of an unanticipated bypass as required in Part II-D-6, (24-hours notice).

d. Prohibition of Bypass

- i. Bypass is prohibited and the Permitting Authority may take enforcement action against a Permittee for bypass, unless:
 - (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe and extensive property damage;
 - (2) There were no feasible alternatives to the bypass, such as maintenance of sufficient reserve holding capacity, the use of auxiliary treatment facilities, retention of untreated wastes, waste hauling, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
 - (3) The Permittee submitted notices as required under Part c (Notice) of this section.
- ii. The Permitting Authority may, within its authority, approve an anticipated bypass, after considering its adverse effects, if the Permitting Authority determines that it will meet the three conditions listed in Part d(i), above.

4. Upset

- a. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- b. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit limitations if the requirements of 40 C.F.R. § 122.41(n)(3) are met. In any enforcement proceedings the Permittee seeking to establish the occurrence of an upset has the burden of proof. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., Permittee will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for non-compliance with technology-based permit effluent limitations).

5. Schedule of Maintenance

Any maintenance of facilities, which might necessitate unavoidable interruption of operation and degradation of effluent quality, shall be scheduled during noncritical water quality periods and carried out in a manner approved by the Permitting Authority.

6. Removed Substances

This permit does not authorize discharge of collected screenings, grit, solids, sludge, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters to waters of the United States unless specifically limited in Part I.

C. MONITORING AND RECORDS

1. Representative Sampling

Samples and measures taken for the purpose of monitoring shall be representative of the volume and nature of the monitored activity.

2. Sampling Points

All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joints or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the Permitting Authority.

3. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to ensure that the accuracy of the measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flow with a maximum deviation of less than + 10 percent from the true discharge rates through the range of expected discharge volumes. Guidance in selection, installation, calibration, and operation of acceptable flow measurement devices can be obtained from the following references:

- a. "A Guide of Methods and Standards for the Measurement of Water Flow," U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 421, May 1975, 97 pp. (Available from the U.S. Government Printing Office, Washington, D.C. 20402. Order by SD Catalog No. C13.10:421.)
- b. "Water Measurement Manual," U.S. Department of Interior, Bureau of Reclamation, Second Edition, Revised Reprinted, 1974, 327 pp. (Available from the U.S. Government Printing Office, Washington, D.C. 20402. Order by Catalog No. 127.19/2:W29/2, Stock No. S/N 24003-0027.)
- c. "Flow Measurement in Open Channels and Closed Conduits," U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 484, October 1977, 982 pp. (Available in paper copy or microfiche from National Technical Information Service [NTIS], Springfield, VA 22151. Order by NTIS No. PB-273 535/5ST.)

- d. "NPDES Compliance Flow Measurement Manual," U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD-77, September 1981, 135 pp. (Available from the General Services Administration [8BRC]. Centralized Mailing Lists Service, Building 41, Denver Federal Center, Denver, CO 80225.)

4. Test Procedures

Test procedures for the analyses of pollutants must be conducted according to test procedures approved under 40 C.F.R. Part 136, unless other test procedures have been specified in this permit.

5. Calibration

The Permittee shall periodically calibrate and perform maintenance on all monitoring and analytical equipment used to monitor the pollutants discharged under this permit, at intervals that will ensure the accuracy of measurements.

6. Testing Variability Not a Defense

If the Permittee believes or has reason to believe that monitoring or sampling results reflect an analytical variability so as to render the results inaccurate, he may monitor or sample more frequently than required by this permit. The validity of the testing results, whether or not the Permittee has monitored or sampled more frequently, shall not be a defense to an enforcement action under the CWA Sections 309 or 505, 33 U.S.C. §§ 1319 or 1365.

7. Penalties for Tampering

The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon the first conviction, be punished by a fine or not more than \$10,000 per violation, or by imprisonment for not more than two years per violation, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this Part, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or both.

8. Retention of Records

The Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application except that records relating to sewage sludge shall be retained for at least five years. This period may be extended by the Permitting Authority at any time.

9. Monitoring Records

Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The initials or name of the individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;

- d. The initials or name of the individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and

- f. The results of all required analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine compliance.

10. Additional Monitoring by The Permittee

If the Permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 C.F.R. Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased frequency shall also be indicated.

11. Averaging of Measurements

Calculations for limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Permitting Authority in the permit

D. REPORTING REQUIREMENTS

1. Change in Discharge

The Permittee shall give notice to the Permitting Authority as soon as possible of any planned physical alternations or additions to the permitted facility. Notice is required only when:

- a. The alteration or addition to the permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 C.F.R. § 122.29(b);
- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under 40 C.F.R. § 122.42(a)(1); or
- c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land applications plan.

2. Anticipated Noncompliance

The Permittee shall give advance notice to the Permitting Authority of any planned change in the permitted facility or activity that may result in noncompliance with permit requirements. Any maintenance of facilities, which might necessitate unavoidable interruption of operation and degradation of effluent quality, shall be scheduled during noncritical water quality periods and carried out in a manner approved by the Permitting Authority.

3. Transfer of Ownership Or Control

A permit may be automatically transferred to another party if:

- a. The Permittee notifies the Permitting Authority of the proposed transfer at least 30 days in advance of the proposed transfer date;
- b. The notice includes a written agreement between the existing and new Permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The Permitting Authority does not notify the existing Permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part b., above.

4. Reporting of Monitoring Results

Monitoring results are to be reported monthly. Monitoring results obtained during each month must be reported on a Discharge Monitoring Report (DMR) Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed reporting period. These reports, and all other reports required by this permit, shall be submitted to EPA at the address below. Copies of all reports should also be submitted to NDEQ at the address below.

Original to: Chief, NPDES and Facilities Management Branch
Water, Wetlands and Pesticides Division
U. S. Environmental Protection Agency
901North 5th Street
Kansas City, Kansas 66101

Copy to: Nebraska Department of Environmental Quality
Permits and Compliance Section
P.O. Box 98922
Lincoln, Nebraska 68509-8922

5. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, the date completion of the scheduled item is anticipated, and the probability of meeting the next scheduled requirement. Reporting as required under this provision does not relieve the permittee of the responsibility to timely complete all requirements of a compliance schedule.

6. Twenty-four Hour Reporting

- a. The Permittee shall orally report any noncompliance that may endanger health or the environment as soon as possible, but no later than 24 hours from the time the Permittee becomes aware of the circumstances. The oral report shall be made to the Chief, NPDES and Facilities Management Branch, at phone number (913) 551- 7030. Reports of noncompliance under this paragraph may be made to the EPA Spill Hotline at (913) 281-0991 if such noncompliance is discovered after regular business hours or on a weekend or holiday and response assistance from EPA is requested. The Permittee shall also provide oral notice to NDEQ.

- b. The following violations shall be included in the 24-hour notice:
 - i. Any unanticipated bypass that exceeds any effluent limitation in the permit;
 - ii. Any upset that exceeds any effluent limitation in the permit; and
- c. A written submission shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written submission shall be submitted to the Chief, NPDES and Facilities Management Branch, with a copy to NDEQ, at the addresses indicated in Part II-D-4, and shall contain a description of the noncompliance, its cause, and the period of noncompliance, including exact dates and times. If the noncompliance has not been corrected, the written submission shall also include the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Permitting Authority may verbally waive the written report, on a case-by case basis, when the oral report is made.

7. Other Noncompliance

The Permittee shall report, in narrative form, all instances of noncompliance not previously reported under Parts 1 through 6 of this Section at the time monitoring reports are submitted. Reporting noncompliance under this provision does not relieve the permittee of the duty to comply with all requirements of this permit.

8. Other Information

When the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information on a permit application or in any report to the Permitting Authority, it shall promptly submit such facts or information.

9. Duty to Provide Information

The Permittee shall furnish to the Permitting Authority, within a reasonable time, any information that the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee also shall furnish to the Permitting Authority, upon request, copies of records required to be kept by this permit.

10. Signatory Requirements

All applications, reports, or information submitted to the Permitting Authority shall be signed and certified.

- a. All permit applications shall be signed as follows:
 - i. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) a president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or (2) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure the necessary systems

are established or actions taken to gather complete and accurate information for permit application requirements: and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- ii. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - iii. For a municipality, state, federal, other political subdivision, public agency/agents thereof: by either a principal executive officer or ranking elected official.
- b. All reports required by permit and other information requested by the Permitting Authority shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- i. The authorization is made in writing by a person described above:
 - ii. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative thus may be either a named individual or any individual occupying a named position.); and
 - iii. The written authorization is submitted to the Permitting Authority.
- c. Changes to authorization. If an authorization under Part b of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part b of this section must be submitted to the Permitting Authority prior to or together with any reports, information, or applications to be signed by an authorized representative.
- d. Certification. Any person signing a document under Parts a or b of this section shall make this following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

11. Availability of Reports

Except for data determined to be confidential under 40 C.F.R. Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Permitting Authority. As required by the Act, permit applications, permit, and effluent data shall not be considered confidential.

12. Penalties for Falsification of Reports

The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, shall, upon the conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

E. REOPENER PROVISIONS**1. Reopener Provision**

This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations (and compliance schedule, if necessary), or other appropriate requirements if one or more of the following events occurs:

- a. Water Quality Standards: The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.
- b. Wasteload Allocation: A wasteload allocation is developed and approved by the State of Nebraska and/or EPA for incorporation in this permit.
- c. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit.
- d. Biological Sludge: There have been substantial changes (or such changes are planned) in sludge use or disposal practices; applicable management practices or numerical limitations for pollutants in sludge have been promulgated which are more stringent than the requirements in this permit; and/or it has been determined that the permittee's sludge use or disposal practices do not comply with existing applicable state or federal regulations.

ATTACHMENT A

COMPLIANCE SCHEDULE

This compliance schedule governs IBP's obligations to effect changes at its Dakota City meat-packing facility with respect to the treatment and disposal of wastewater from its Slaughterhouse and Tannery at its Wastewater Treatment Facility ("WWTF"). It also governs work done at IBP's former Palestine Facility concerning certain on-site conditions not remediated by any past or current owner, and that will facilitate further closure of that facility. By agreeing to this injunctive relief, IBP neither admits nor denies the allegations of the Complaint relating to either the Dakota City or Palestine Facilities.

I. Dakota City Facility Injunctive Relief

A. Task 1: Nitrification

1. IBP shall, in accordance with the schedule and requirements set forth herein, design, construct, and properly operate a nitrification system at the WWTF according to the terms, conditions and schedules set forth herein.

2. IBP shall design a nitrification system in accordance with sound engineering practices and including the same elements and general design provided in the final design plans and specifications submitted to EPA and approved by NDEQ: DC-07-45-340-439.

3. IBP has submitted a timely application to NDEQ that complies with all applicable federal, state and local law for all necessary State construction permits for the nitrification system. The Parties recognize that a) an untimely response by NDEQ to IBP's construction permit application; b) an untimely approval by NDEQ of construction specifications for the nitrification system; c) an untimely response to IBP's request for authorization to construct, or d) the imposition by NDEQ of other permitting requirements beyond a construction permit as specified in this section may adversely affect IBP's ability to meet the construction schedule set forth in Paragraph 4, below, and IBP reserves all rights under Paragraph 10 and Section XVI (Force Majeure) of the Consent Decree in that event.

ATTACHMENT B

INTERIM DISCHARGE, MONITORING AND REPORTING REQUIREMENTS

I. Ammonia and WET Requirements

1. Beginning on the date of lodging of this Consent Decree and continuing until such time as the new nitrification system becomes fully operational in accordance with Paragraph 4(h) of Attachment A, IBP shall comply with the following interim effluent limits, and monitoring and reporting requirements:

Effluent Parameters	Units	30 Day Average	Daily Maximum	Monitoring Frequency	Sample Type
Ammonia as Nitrogen March 1- October 31	mg/l	236	374	Weekly	24-hour composite
Ammonia As Nitrogen March 1- October 31	kg/day	3578	5671	Weekly	24-hour Composite
Ammonia As Nitrogen Nov. 1 -Feb. 28	mg/l	252	298	Weekly	24-Hour Composite
Ammonia As Nitrogen Nov. 1-Feb. 28	kg/day	3821	4518	Weekly	24-Hour Composite
Pimephales promelas March 1- October 31	TUa		None; monitor only	Quarterly	24-Hour Composite
Ceriodaphnia sp. March 1- October 31	TUa		None; monitor only	Quarterly	24-Hour Composite

ATTACHMENT C

SUPPLEMENTAL ENVIRONMENTAL PROJECTS

This Attachment to the Consent Decree governs IBP's commitment to construct enhanced nitrification at its Dakota City Wastewater Treatment Facility ("WWTF"), in order to reduce the WWTF's discharge of ammonia to the Missouri River below amounts that otherwise might be permissible under the Dakota City Facility's current NPDES Permit, and to expand the operation of a reverse osmosis system to be constructed under the terms of the Partial Consent Decree entered in this case on September 20, 2000.

I. General Requirements

1. IBP shall implement Supplemental Environmental Projects ("SEPs") at its Dakota City Facility, as set forth in Section II, infra. IBP certifies that the estimated costs of these SEPs have been calculated according to standard protocols used by IBP to evaluate similar projects for corporate review and approval. IBP shall maintain complete documentation of the cost estimates and actual costs of design, construction, and operation, for each SEP until EPA approval of the Final SEP Report for that SEP in accordance with Paragraph 8, infra.

2. Each SEP described in Section II, infra, includes a schedule for development and implementation. Each SEP shall proceed independently, according to the planned schedule.

3. IBP shall submit to EPA for approval any material changes that IBP may wish to make to an approved SEP in light of information obtained during the development or implementation of a SEP.

4. In the event that IBP determines that completion of an approved SEP is not economically or technically feasible, IBP, within 60 days of such determination, may:

a. Submit for EPA review and approval a fully-documented proposal for an alternative SEP. EPA retains the sole discretion to determine whether to approve the alternative SEP. If EPA approves the alternative SEP, IBP shall pay a cash penalty equal to the difference, if any, between the amount set forth in Paragraph 4(b) for the SEP canceled by IBP and the SEP cost of the alternative (net present after-tax cost calculated pursuant to EPA's Project model, unless it is an accelerated compliance project, in which case it would be the cost of accelerated compliance calculated using EPA's BEN model). EPA

may reduce any cash penalty due in addition to the alternative SEP in its sole discretion.

b. Pay a cash penalty to the United States in the following amounts for each SEP set forth in Section II, infra:

Enhanced Nitrification:	\$2,900,000
Expanded Reverse Osmosis:	\$500,000

5. EPA may reduce any penalty due under Paragraph 4(b) in its sole discretion, if it determines that IBP made good faith and timely efforts to complete the project, and provided that IBP certifies, with supporting documentation, that at least 50% percent of the amount of money which was required to be spent was expended on the SEP.

6. Within sixty (60) days of the completion of each SEP, including any requirement for continuous use or operation of the system, IBP shall submit to EPA for approval a Final SEP Report containing the following information:

a. A narrative description of the development and/or implementation of the SEP, including a discussion of the process involved and the technology utilized;

b. A description of any operating problems encountered and the solutions thereto;

c. Any identification of materials to be treated as confidential in conformance with 40 C.F.R. Part 2, together with the designation and enclosure of any material or information that may be publicly released;

d. A discussion of actual pollution reduction, as compared to projected pollution reduction, as a result of the SEP.

e. Final cost documentation for the SEP, including supporting documentation including invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods or services for which payment is made. Canceled drafts do not constitute acceptable evidence unless such drafts specifically identify and itemize the individual costs of the goods or services for which payment is made. Defendant bears the burden of clearly segregating eligible SEP costs from other costs not eligible for SEP credit. Any unsegregable cost evidence that contains both SEP eligible and non-SEP eligible cost items shall be

disallowed in its entirety. Each submission required under this Paragraph shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Section IX of the Consent Decree. If the final cost of a completed SEP is less than the projected cost for that SEP as set forth in Section II, infra, then IBP shall also calculate the difference between the original present cost estimate and the corrected cost, according to the methodology set forth for that SEP in Section II, to calculate any "Shortfall." EPA retains the right to determine whether IBP has provided sufficient documentation to substantiate its expenditures for a particular SEP.

f. A certification, pursuant to Section IX of the Consent Decree, that the SEP has been completed in accordance with the plan set forth in Section II, infra, or as modified with EPA approval.

g. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

7. Materials designated by IBP as eligible for public release pursuant to Paragraph 6(c), supra, must bear the statement:

"This information is being presented to the United States in satisfaction of the pollution prevention requirements of Section XIV of the Consent Decree in United States v. IBP inc.,"

and must include the docket number of this action. Such materials may be incorporated into EPA's Electronic Information Exchange System, or used by EPA, inter alia, to draft guidance for other manufacturers or for other purposes.

8. Following receipt of the Final SEP Report described in Paragraph 6, supra, EPA will do one of the following:

- a. accept the Final SEP Report;
- b. Notify IBP in writing, of deficiencies in the Final SEP Report and grant IBP an additional thirty (30) days in which to correct any deficiencies; or
- c. reject the Final SEP Report.

9. If EPA identifies deficiencies in or rejects the Final SEP Report, EPA shall permit IBP the opportunity to respond in writing to the notification of deficiency or disapproval given pursuant to Paragraph 10 within thirty (30) days of receipt of such notification. EPA and IBP shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement. If EPA rejects the Final SEP Report due to the substantive failure of the SEP, in whole or in part, then the Parties shall include in their negotiations the amount of a cash penalty to be paid by IBP, up to the amount specified in Paragraph 4(b). If agreement cannot be reached on any disputed issue within this thirty (30) day period, the dispute resolution provisions of Section XV of the Consent Decree will apply. In the event EPA prevails following any dispute resolution, IBP shall pay EPA a cash penalty in the amount determined by the Court up to the amount specified in Paragraph 4(b).

10. For all SEPs not completed as of January 1st of each year, IBP shall submit an Annual Progress Report to EPA, due each March 1st, summarizing for each uncompleted SEP:

a. Any modification of the SEP approved under Paragraph 4, supra, or for which IBP expects to seek approval;

b. Actions taken by IBP toward implementation of each SEP during the previous year;

c. Activities in further implementation of each uncompleted SEP that are scheduled for the upcoming year;

d. The anticipated schedule for completion of each uncompleted SEP, including a discussion of any actual or anticipated delays;

e. Expenditures incurred to date for each SEP, together with projected expenditures for the upcoming year.

11. Except as specifically set forth in Section II, infra, failure to meet any SEP implementation or construction deadline, or to submit the Final SEP Report or any Annual Progress Report required by Paragraphs 6 and 10, supra, shall be deemed a violation of this Consent Decree, and IBP shall become liable for stipulated penalties pursuant to Section XIV of the Consent Decree. However, pursuant to Paragraph 43 of the Consent Decree, duplicative penalties may not be collected for the same violation of the same requirement of this Consent Decree.

12. Except as provided in Section II.B.3(b) of this Attachment, within 30 days of the completion and approval of all the SEPs enumerated in Section II, infra, IBP shall make a cash payment to the United States for each SEP completed with a Shortfall, as calculated according to Section II, in the amount of the Shortfall. Such payment shall be made in accordance with the provisions of Paragraph 36 of the Consent Decree.

13. Cost overruns on a completed SEP, or costs incurred in research and development work on a SEP terminated pursuant to Paragraph 4, supra, may not be used to offset a Shortfall on another SEP unless specifically approved by EPA in writing, upon proper documentation of such costs in accordance with Paragraph 7(e), supra. EPA retains the sole discretion to determine whether such an offset will be permitted.

14. EPA acceptance of the SEPs specified in this Section shall not be construed to constitute EPA approval of the equipment or technology instituted by IBP in implementing the SEPs.

15. Each SEP must be implemented in conformance with all applicable federal, state, and local laws.

16. IBP shall submit a copy of each document required to be submitted to EPA under this Attachment contemporaneously to NDEQ.

II. Description of Supplemental Environmental Projects

IBP shall undertake the following Supplemental Environmental Projects, which the parties agree are intended to secure significant environmental or public health protection and improvements.

A. Enhanced Nitrification Performance

1. Project Description

Pursuant to the Compliance Schedule attached to the Consent Decree as Attachment A, IBP is constructing a nitrification system at its Dakota City Facility that will allow it to reduce its discharges of ammonia to the Missouri River. The system being constructed by IBP exceeds what the United States contends is needed to bring IBP into compliance with its 1995 NPDES Permit and, when completed, will allow IBP to reduce its ammonia discharges significantly below the levels that the United States contends are required under that permit.

The construction and operation of this nitrification system to achieve the enhanced performance criteria set forth below are acknowledged as a SEP.

2. Schedule

The schedule for completion of the new nitrification system is set forth in the Compliance Schedule, which is Attachment A to the Consent Decree. Failure to meet any implementation or construction deadline for this SEP shall be deemed a violation of Attachment A of this Consent Decree subject to stipulated penalties pursuant to Section XIV of the Consent Decree, but duplicative penalties under this Attachment will not be assessed for the same schedule violations. IBP shall operate the nitrification system in accordance with the interim requirements set forth in Attachment C to the Consent Decree and Paragraph 4, below, following completion of construction until such time as a new NPDES Permit for the Dakota City Facility is final and becomes effective.

3. Cost

The difference between the present after-tax cost of the nitrification system being installed by IBP under the terms and conditions of the Compliance Schedule and a smaller system that would simply allow IBP to meet the requirements of its 1995 Permit has been calculated as \$2,900,000. The actual cost of constructing a smaller nitrification system that would simply allow IBP to meet the requirements of its 1995 Permit has been estimated by IBP as \$2,974,095. For purposes of Section I.12, supra, a Shortfall in this SEP is any amount above zero, calculated by:

a. subtracting \$2,974,095 from the total actual cost of Task 1 (Nitrification) of Attachment A, to reach the actual cost of the Enhanced Nitrification SEP;

b. converting the actual cost of the Enhanced Nitrification SEP to a net present after-tax value calculated pursuant to EPA's Project model; and

c. subtracting the net present after tax-value of the Enhanced Nitrification SEP from \$2,900,000.

For the purposes of Section I.6.e, supra, the cost documentation for the Enhanced Nitrification SEP shall include all documentation for the cost of completing Task 1 (Nitrification) of Attachment A, and all such costs shall be

SEP eligible costs to be included in the calculation set forth above.

4. Performance Measures

(a) Following the time that the new nitrification system becomes fully operational in accordance with Paragraph 4(h) of Attachment A, and until completion of the first Winter season as defined in IBP's NPDES permit that occurs after such time as a new NPDES Permit for the Dakota City Facility becomes final, effective and no longer subject to review and appeal, IBP's discharges from its wastewater treatment facility shall comply with the following interim effluent limits, and monitoring and reporting requirements:

Effluent Parameters	Units	30 Day Average	Daily Maximum	Monitoring Frequency	Sample Type
Flow	MGD	Report	Report	Daily	Calculated or Metered
Biochemical Oxygen Demand	kg/day	1163.9	2359.6	Weekly	24-Hour Composite
Total Suspended Solids	kg/day	1704.5	3488.0	Weekly	24-Hour Composite
Nitrate as Nitrogen	mg/l	Report	Report	Weekly	24-Hour Composite
pH	S.U.	Minimum 6.5	9.0	Weekly	Grab
Oil and Grease	kg/day	423.6	875.9	Weekly	Grab
Sulfide, Total (as S)	mg/l	Report	Report	Weekly	Grab
Chromium, total	kg/day	4.76	12.7	Monthly	24-Hour Composite
Dissolved Oxygen	mg/l	Minimum 2.0		Weekly	Grab

Fecal Coliform Colonies May 1-Sept.30	MPN	200	400	Weekly	Grab
Fecal Coliform Colonies Oct. 1-April 30	MPN	Report	400	Weekly	Grab
Ammonia as Nitrogen March 1-October 31	mg/l	37.5	75	Weekly	24-hour composite
Ammonia As Nitrogen March 1-October 31	kg/day	604	1422	Weekly	24-hour Composite
Ammonia As Nitrogen Nov. 1 - Feb. 28	mg/l	75	150	Weekly	24-Hour Composite
Ammonia As Nitrogen Nov. 1-Feb. 28	kg/day	1208	2844	Weekly	24-Hour Composite
Total Residual Chlorine March 1-October 31	mg/l	1.17	2.64	Weekly	Grab
Total Residual Chlorine Nov. 1-Feb 28	mg/l	0.65	1.46	Weekly	Grab
Pimephales promelas March 1-October 31	TUa		13.6	Quarterly	24-Hour Composite
Ceriodaphnia sp. March 1-October 31	TUa		13.6	Quarterly	24-Hour Composite

Pimephales promelas November 1- February 28	TUa		9	Quarterly	24-Hour Composite
Ceriodaphnia sp. November 1-February 28	TUa		9	Quarterly	24-Hour Composite

(b) All WET testing shall conform to the terms, conditions and schedules set forth in Attachment B. Any failure of the test using either species counts as a violation; failure for both species counts as two violations.

(c) WET testing shall be conducted quarterly, so long as one of the quarterly tests falls within the Winter season as defined in its NPDES permit. If IBP remains in continuous compliance with its WET limits requirements under Attachment C for two consecutive years (eight monitoring periods) after the new nitrification system becomes fully operational in accordance with Paragraph 4(h) of Attachment A, and if the new NPDES Permit has not yet become final, effective and no longer subject to appeal, then IBP may petition EPA to eliminate the WET limits set forth in Section II.A.4(a), supra.

(d) IBP shall be entitled to modify the WET limits and the daily and 30-day average ammonia mass limits set forth in the above Table on one occasion after the new nitrification system becomes fully operational in accordance with Paragraph 4(h) of Attachment A, and before IBP's new NPDES Permit becomes final, effective and no longer subject to review and appeal. Upon notice by IBP in accordance with Section X of the Consent Decree (Notices), the WET effluent limits and the 30-day average ammonia mass limits shall be modified to conform to the values for those limits set forth in Part I.C.1 of the Draft NPDES Permit, Attachment D to the Consent Decree, and the modified daily maximum ammonia mass effluent limits shall be: (i) May 1 through October 31 - 1,493 kg/day and (ii) November 1 through April 30 - 2,986 kg/day. The modification of these limits shall become effective on the first day of the month following the submission of IBP's notice to the United States, and shall remain in effect consistent with all other terms and conditions of this Consent Decree.

B. Expanded Reverse Osmosis Project

1. Project Description

Under Paragraph 13(f) of the Partial Consent Decree entered in this case on September 20, 2000, IBP within two hundred and forty (240) days after issuance of any preconstruction permits required by NDEQ or other regulatory approvals (or receipt of notice that no such permits are required), must complete construction and place into operation for a period of two years a reverse osmosis system designed to remove sulfates from the source water used by its facility. Under the terms of this SEP, IBP agrees to operate this system for an additional three (3) years, for a total of five (5) years of operation, agrees not to contest permit requirements governing the discharge of "reject water" from the reverse osmosis system, and agrees to submit to EPA enhanced reporting of operating information as provided below.

2. Reporting Requirements

IBP agrees to provide the following reports to EPA regarding the reverse osmosis project:

a. IBP shall submit an initial report within 90 days from start-up of the RO process containing the following information:

- ! Specifications (rated capacity, membrane type, number of stages, operating pressure, etc) of the equipment installed
- ! Purchase cost of the equipment
- ! A description of any ancillary equipment (i.e., raw water pretreatment, structure around the unit, storage tankage, etc.) and Cost for design, plumbing, electrical, insurance, etc. such that these costs plus the purchase costs equal the total installed cost.

b. IBP shall also submit annual reports on each anniversary of the Initial Report, containing the following information:

- ! Average daily volume of water treated

- ! Average daily volume of reject water
- ! Average daily power required in KW
- ! Average daily chemical costs (if any)
- ! Average daily labor hours for operation and routine maintenance
- ! Material and labor costs for any extraordinary maintenance (major equipment failure or membrane replacement)
- ! Summary of any performance data collected on either product water quality of reject stream characteristics

3. Cost

a. IBP estimates that annual operating costs for this SEP will be approximately \$440,000 per year, and documentation costs are \$0 per year. Accordingly, the estimated present after-tax value of these expenditures is approximately \$500,000.

b. EPA recognizes that this SEP is a technology-forcing project, and wishes to provide IBP with an incentive to reduce annual operating costs below the amount estimated in Paragraph 1, above. Accordingly, EPA will not require payment of any Shortfall for this SEP under Paragraph I.12 of this Attachment, provided that the SEP is successfully completed and cost documentation is provided. This agreement does not affect IBP's liability for any stipulated penalties that otherwise may accrue in connection with the performance of this SEP.

Pimephales promelas November 1- February 28	TUa		None; monitor only	Monthly	24-Hour Composite
Ceriodaphnia sp. November 1-February 28	TUa		None; monitor only	Monthly	24-Hour Composite

2. Reporting Frequency: Monthly to be reported by the 22nd of the following month to the EPA contact.

3. All sampling and analysis must comply with IBP's 1995 NPDES permit, NE0001392, except as set forth in Section II, below, with respect to WET testing.

II. Interim WET Monitoring

A. General Test Requirements and Conditions

1. IBP will conduct concurrent, acute static renewal tests -- 48 hour using fathead minnows and *Ceriodaphnia dubia* -- according to applicable EPA protocols contained in 40 C.F.R. Part 136, and test conditions below. The concurrent tests will be conducted using the same effluent samples and renewed at the same frequency, and test temperature (20° C).

a) all samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity;

b) IBP shall use EPA approved methods from 40 CFR Part 136 or latest revisions thereof;

c) all QA/QC measures must be met as specified in EPA approved methods;

d) samples must be collected and analyzed for pH, temperature, hardness, alkalinity, conductivity, dissolved oxygen (DO), total residual chlorine (TRC), total ammonia, total Kjeldahl nitrogen (TKN), nitrate, and nitrite (pH, temperature, DO and TRC should be analyzed at time of sampling and prior to testing in laboratory. Measurements are to be made on aliquots removed from the composite sample);

e) several of these parameters are to be monitored during the whole effluent toxicity (WET) test, on each test

concentration, including: temperature at 0 hours (initial) and each 24 hours (final) on the same test sample, pH (initial and final), DO (initial and final), conductivity (initial), ammonia (initial on each new composite sample), and TRC on each new composite sample;

f) all 24-hour composite samples are to be proportional to flow and describe method in reports;

g) start days of all tests should be staggered to ensure that testing accounts for peak production periods;

h) WET test results should be reported in terms of LC50 and TUA; and

i) all chemical and WET test results, raw data, and statistical analyses are to be submitted to EPA.

2. For WET test results to be acceptable, control survival must equal or exceed 90%. Test volume, temperature range and test conditions must follow the most current EPA acute toxicity test method. Initial chemical concentrations should be measured at the start of the test, and periodic measurements should be made daily on one tank for each concentration.

3. WET test shall be started early enough in the month to ensure that testing is completed in the month that it was initiated (e.g, February testing will be completed within February and not carry over to March).

4. An effluent sample shall be collected for each testing period and shall be analyzed for the following ion concentrations in the final effluent: four major cations, Ca^{2+} , Mg^{2+} , Na^+ , and K^+ and the four major anions HCO_3^- , CO_3^{2-} , SO_4^{2-} , and Cl^- . Level of detection must be reported. This monitoring shall be conducted according to the frequency of testing specified in Section C, below.

5. IBP shall submit a report to the EPA due within 30 days from termination of the last toxicity test for that test period. The report shall include a running summary of results presented in table format as well as a description of each test conducted (including when and how sample was renewed, source and feeding of test organisms, etc.). Raw test data submitted will include a summary of the pH range (initial to final) for each test concentration.

B. Specific Test Requirements

1. IBP shall initiate 48 hour static renewal acute tests to be run concurrently using 2 test species. A flow proportional 24-hour composite sample with the test species, *Pimephales promelas* and *Ceriodaphnia dubia*, a minimum of six (6) effluent concentrations (100%, 40%, 20%, 10%, 5%, 2.5%), and a control are to be used to determine a definitive LC50 for each test. Four (4) test replicates are to be provided for each concentration and the control. Test temperature must be 20° C and laboratory water (moderately hard, reconstituted water per EPA's acute manual) should be used for dilution. The test sample must be renewed no less frequently than every 24 hours. DO, ammonia, temperature, and pH are to be measured at the beginning and end of each 24-hour exposure period in at least one test chamber at each test concentration and in the control.

C. Frequency of Testing

1. The frequency for WET testing shall be modified at the commencement of the testing and start-up of the nitrification system pursuant to Paragraph 4(g) of the Compliance Schedule ("Start-up"), as follows:

IBP shall conduct WET tests using both *Pimephales promelas* and *Ceriodaphnia* monthly from May 1, 2003 through July 31, 2003.

2. After the new nitrification system becomes fully operational in accordance with Paragraph 4(h) of Attachment A, IBP's discharge limits, monitoring and reporting requirements shall be governed by Attachment C to the Consent Decree.

4. IBP shall construct and properly operate a nitrification system at its existing WWTF consisting of the following major elements and proceeding according to the following schedule:

- a. Begin construction of one or more of the buildings associated with the nitrification system by October 17, 2001. These buildings are noted as Structures 140, 170, 185, 190, and 240 on the attached site plan.
- b. Complete construction of all buildings associated with the nitrification system by November 25, 2002.
- c. Complete construction of the three (3) new aeration basins by July 15, 2002.
- d. Complete construction of the three (3) new clarifiers by March 24, 2003.
- e. Complete construction of the yard piping by April 28, 2003.
- f. Complete the mechanical/electrical installation associated with the nitrification system by April 28, 2003.
- g. Commence testing and startup operation period for the nitrification system on or before April 29, 2003.
- h. The testing and startup operation period for the nitrification system shall be completed by July 28, 2003.
- i. IBP shall place the new nitrification system into full operational status on or before July 29, 2003.

B. Task 2: Staffing of WWTF

1. IBP shall staff the WWTF 24 hours a day, 7 days a week with a certified operator from the time the new nitrification system is placed into full operational status until 6 months after continuous compliance with the post-construction ammonia interim discharge limits set forth in Attachment B to the Consent Decree. The WWTF operators shall be certified in accordance with Nebraska State requirements. By June 30, 2003, IBP shall submit a work schedule to EPA, including the name and qualifications of each operator for each shift.

C. Task 3: O&M Manual

BY July 29, 2003, IBP shall assemble and maintain for internal use an Operation and Maintenance Manual for the WWTF which will include proper operating procedures for the facility; requirements for operational sampling and monitoring; procedures for operations during predicable, atypical circumstances such as power failures, treatment units out of service, unusual over or under-loading of the facility; and procedures for notifying EPA, the State of Nebraska, and the public in case of emergency. This manual need not physically incorporate all relevant materials so long as all materials are fully indexed and referenced as appendices, and are maintained in physical proximity to the manual.

II. Palestine Facility Injunctive Relief

The following injunctive relief relating to IBP's former Palestine Facility commenced in June 2001 and was completed by October 12, 2001, pursuant to an access agreement annexed hereto as Appendix 1, and is recounted below for purposes of public disclosure, as the work was a condition of settlement.

A. Task 1: Removal and proper disposal of hazardous waste

1. IBP has removed and properly disposed of stun gun cartridges left on the site by past and current owners of the site. These barrels, containing stun gun cartridges and contaminated soil, shall be removed and properly disposed of in a manner consistent with IBP's policy to handle stun gun cartridges as a hazardous waste, including manifesting the barrels to a TSD facility for proper disposal.

2. IBP has collected and analyzed, pursuant to EPA protocols and guidance, soil samples from the area previously identified by EPA and IBP where the stun gun cartridges were stored. The sampling results and analysis have been submitted to EPA.

3. IBP has removed and properly disposed of the top layer of soil containing spent casings at the entrance of the horse slaughter building. This layer of soil was removed and properly disposed of in a manner consistent with IBP's policy to handle stun gun cartridges as a hazardous waste, including manifesting the barrels to a TSD facility for proper disposal.

B. Task 2: Removal and proper disposal of non-hazardous waste

1. IBP has removed and properly disposed of the two piles of uncovered scrap metal and debris, as previously identified by EPA and IBP.

C. Task 3: Removal and proper disposal of waste and fuel

1. IBP has pumped out and properly disposed of waste in the Imhoff tank.

2. IBP has pumped out and properly disposed of fuel in above-ground fuel tanks previously identified by EPA and IBP.

3. IBP has pumped out and properly disposed of waste in the septic tank.

4. IBP has pumped out and properly disposed of waste in the lift station.

D. Task 4: Sample storm water runoff from the wastewater system for BOD, TSS, and ammonia-nitrogen

1. IBP has collected and analyzed, pursuant to EPA protocols and guidance, previously collected water samples from the wastewater system. The sampling results and analysis have been submitted to EPA.

E. Task 5.

1. IBP has cleaned the three transformers previously identified by EPA and IBP.

F. Task 6.

1. IBP by October 31, 2001 shall submit a final report for review and approval to EPA, documenting that all work has been completed as outlined above.

ATTACHMENT C

SUPPLEMENTAL ENVIRONMENTAL PROJECTS

This Attachment to the Consent Decree governs IBP's commitment to construct enhanced nitrification at its Dakota City Wastewater Treatment Facility ("WWTF"), in order to reduce the WWTF's discharge of ammonia to the Missouri River below amounts that otherwise might be permissible under the Dakota City Facility's current NPDES Permit, and to expand the operation of a reverse osmosis system to be constructed under the terms of the Partial Consent Decree entered in this case on September 20, 2000.

I. General Requirements

1. IBP shall implement Supplemental Environmental Projects ("SEPs") at its Dakota City Facility, as set forth in Section II, infra. IBP certifies that the estimated costs of these SEPs have been calculated according to standard protocols used by IBP to evaluate similar projects for corporate review and approval. IBP shall maintain complete documentation of the cost estimates and actual costs of design, construction, and operation, for each SEP until EPA approval of the Final SEP Report for that SEP in accordance with Paragraph 8, infra.

2. Each SEP described in Section II, infra, includes a schedule for development and implementation. Each SEP shall proceed independently, according to the planned schedule.

3. IBP shall submit to EPA for approval any material changes that IBP may wish to make to an approved SEP in light of information obtained during the development or implementation of a SEP.

4. In the event that IBP determines that completion of an approved SEP is not economically or technically feasible, IBP, within 60 days of such determination, may:

a. Submit for EPA review and approval a fully-documented proposal for an alternative SEP. EPA retains the sole discretion to determine whether to approve the alternative SEP. If EPA approves the alternative SEP, IBP shall pay a cash penalty equal to the difference, if any, between the amount set forth in Paragraph 4(b) for the SEP canceled by IBP and the SEP cost of the alternative (net present after-tax cost calculated pursuant to EPA's Project model, unless it is an accelerated compliance project, in which case it would be the cost of accelerated compliance calculated using EPA's BEN model). EPA

may reduce any cash penalty due in addition to the alternative SEP in its sole discretion.

b. Pay a cash penalty to the United States in the following amounts for each SEP set forth in Section II, infra:

Enhanced Nitrification:	\$2,900,000
Expanded Reverse Osmosis:	\$500,000

5. EPA may reduce any penalty due under Paragraph 4(b) in its sole discretion, if it determines that IBP made good faith and timely efforts to complete the project, and provided that IBP certifies, with supporting documentation, that at least 50% percent of the amount of money which was required to be spent was expended on the SEP.

6. Within sixty (60) days of the completion of each SEP, including any requirement for continuous use or operation of the system, IBP shall submit to EPA for approval a Final SEP Report containing the following information:

a. A narrative description of the development and/or implementation of the SEP, including a discussion of the process involved and the technology utilized;

b. A description of any operating problems encountered and the solutions thereto;

c. Any identification of materials to be treated as confidential in conformance with 40 C.F.R. Part 2, together with the designation and enclosure of any material or information that may be publicly released;

d. A discussion of actual pollution reduction, as compared to projected pollution reduction, as a result of the SEP.

e. Final cost documentation for the SEP, including supporting documentation including invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods or services for which payment is made. Canceled drafts do not constitute acceptable evidence unless such drafts specifically identify and itemize the individual costs of the goods or services for which payment is made. Defendant bears the burden of clearly segregating eligible SEP costs from other costs not eligible for SEP credit. Any unsegregable cost evidence that contains both SEP eligible and non-SEP eligible cost items shall be

disallowed in its entirety. Each submission required under this Paragraph shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Section IX of the Consent Decree. If the final cost of a completed SEP is less than the projected cost for that SEP as set forth in Section II, infra, then IBP shall also calculate the difference between the original present cost estimate and the corrected cost, according to the methodology set forth for that SEP in Section II, to calculate any "Shortfall." EPA retains the right to determine whether IBP has provided sufficient documentation to substantiate its expenditures for a particular SEP.

f. A certification, pursuant to Section IX of the Consent Decree, that the SEP has been completed in accordance with the plan set forth in Section II, infra, or as modified with EPA approval.

g. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

7. Materials designated by IBP as eligible for public release pursuant to Paragraph 6(c), supra, must bear the statement:

"This information is being presented to the United States in satisfaction of the pollution prevention requirements of Section XIV of the Consent Decree in United States v. IBP inc.,"

and must include the docket number of this action. Such materials may be incorporated into EPA's Electronic Information Exchange System, or used by EPA, inter alia, to draft guidance for other manufacturers or for other purposes.

8. Following receipt of the Final SEP Report described in Paragraph 6, supra, EPA will do one of the following:

- a. accept the Final SEP Report;
- b. Notify IBP in writing, of deficiencies in the Final SEP Report and grant IBP an additional thirty (30) days in which to correct any deficiencies; or
- c. reject the Final SEP Report.

9. If EPA identifies deficiencies in or rejects the Final SEP Report, EPA shall permit IBP the opportunity to respond in writing to the notification of deficiency or disapproval given pursuant to Paragraph 10 within thirty (30) days of receipt of such notification. EPA and IBP shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement. If EPA rejects the Final SEP Report due to the substantive failure of the SEP, in whole or in part, then the Parties shall include in their negotiations the amount of a cash penalty to be paid by IBP, up to the amount specified in Paragraph 4(b). If agreement cannot be reached on any disputed issue within this thirty (30) day period, the dispute resolution provisions of Section XV of the Consent Decree will apply. In the event EPA prevails following any dispute resolution, IBP shall pay EPA a cash penalty in the amount determined by the Court up to the amount specified in Paragraph 4(b).

10. For all SEPs not completed as of January 1st of each year, IBP shall submit an Annual Progress Report to EPA, due each March 1st, summarizing for each uncompleted SEP:

a. Any modification of the SEP approved under Paragraph 4, supra, or for which IBP expects to seek approval;

b. Actions taken by IBP toward implementation of each SEP during the previous year;

c. Activities in further implementation of each uncompleted SEP that are scheduled for the upcoming year;

d. The anticipated schedule for completion of each uncompleted SEP, including a discussion of any actual or anticipated delays;

e. Expenditures incurred to date for each SEP, together with projected expenditures for the upcoming year.

11. Except as specifically set forth in Section II, infra, failure to meet any SEP implementation or construction deadline, or to submit the Final SEP Report or any Annual Progress Report required by Paragraphs 6 and 10, supra, shall be deemed a violation of this Consent Decree, and IBP shall become liable for stipulated penalties pursuant to Section XIV of the Consent Decree. However, pursuant to Paragraph 43 of the Consent Decree, duplicative penalties may not be collected for the same violation of the same requirement of this Consent Decree.

12. Except as provided in Section II.B.3(b) of this Attachment, within 30 days of the completion and approval of all the SEPs enumerated in Section II, infra, IBP shall make a cash payment to the United States for each SEP completed with a Shortfall, as calculated according to Section II, in the amount of the Shortfall. Such payment shall be made in accordance with the provisions of Paragraph 36 of the Consent Decree.

13. Cost overruns on a completed SEP, or costs incurred in research and development work on a SEP terminated pursuant to Paragraph 4, supra, may not be used to offset a Shortfall on another SEP unless specifically approved by EPA in writing, upon proper documentation of such costs in accordance with Paragraph 7(e), supra. EPA retains the sole discretion to determine whether such an offset will be permitted.

14. EPA acceptance of the SEPs specified in this Section shall not be construed to constitute EPA approval of the equipment or technology instituted by IBP in implementing the SEPs.

15. Each SEP must be implemented in conformance with all applicable federal, state, and local laws.

16. IBP shall submit a copy of each document required to be submitted to EPA under this Attachment contemporaneously to NDEQ.

II. Description of Supplemental Environmental Projects

IBP shall undertake the following Supplemental Environmental Projects, which the parties agree are intended to secure significant environmental or public health protection and improvements.

A. Enhanced Nitrification Performance

1. Project Description

Pursuant to the Compliance Schedule attached to the Consent Decree as Attachment A, IBP is constructing a nitrification system at its Dakota City Facility that will allow it to reduce its discharges of ammonia to the Missouri River. The system being constructed by IBP exceeds what the United States contends is needed to bring IBP into compliance with its 1995 NPDES Permit and, when completed, will allow IBP to reduce its ammonia discharges significantly below the levels that the United States contends are required under that permit.

The construction and operation of this nitrification system to achieve the enhanced performance criteria set forth below are acknowledged as a SEP.

2. Schedule

The schedule for completion of the new nitrification system is set forth in the Compliance Schedule, which is Attachment A to the Consent Decree. Failure to meet any implementation or construction deadline for this SEP shall be deemed a violation of Attachment A of this Consent Decree subject to stipulated penalties pursuant to Section XIV of the Consent Decree, but duplicative penalties under this Attachment will not be assessed for the same schedule violations. IBP shall operate the nitrification system in accordance with the interim requirements set forth in Attachment C to the Consent Decree and Paragraph 4, below, following completion of construction until such time as a new NPDES Permit for the Dakota City Facility is final and becomes effective.

3. Cost

The difference between the present after-tax cost of the nitrification system being installed by IBP under the terms and conditions of the Compliance Schedule and a smaller system that would simply allow IBP to meet the requirements of its 1995 Permit has been calculated as \$2,900,000. The actual cost of constructing a smaller nitrification system that would simply allow IBP to meet the requirements of its 1995 Permit has been estimated by IBP as \$2,974,095. For purposes of Section I.12, supra, a Shortfall in this SEP is any amount above zero, calculated by:

a. subtracting \$2,974,095 from the total actual cost of Task 1 (Nitrification) of Attachment A, to reach the actual cost of the Enhanced Nitrification SEP;

b. converting the actual cost of the Enhanced Nitrification SEP to a net present after-tax value calculated pursuant to EPA's Project model; and

c. subtracting the net present after tax-value of the Enhanced Nitrification SEP from \$2,900,000.

For the purposes of Section I.6.e, supra, the cost documentation for the Enhanced Nitrification SEP shall include all documentation for the cost of completing Task 1 (Nitrification) of Attachment A, and all such costs shall be

SEP eligible costs to be included in the calculation set forth above.

4. Performance Measures

(a) Following the time that the new nitrification system becomes fully operational in accordance with Paragraph 4(h) of Attachment A, and until completion of the first Winter season as defined in IBP's NPDES permit that occurs after such time as a new NPDES Permit for the Dakota City Facility becomes final, effective and no longer subject to review and appeal, IBP's discharges from its wastewater treatment facility shall comply with the following interim effluent limits, and monitoring and reporting requirements:

Effluent Parameters	Units	30 Day Average	Daily Maximum	Monitoring Frequency	Sample Type
Flow	MGD	Report	Report	Daily	Calculated or Metered
Biochemical Oxygen Demand	kg/day	1163.9	2359.6	Weekly	24-Hour Composite
Total Suspended Solids	kg/day	1704.5	3488.0	Weekly	24-Hour Composite
Nitrate as Nitrogen	mg/l	Report	Report	Weekly	24-Hour Composite
pH	S.U.	Minimum 6.5	9.0	Weekly	Grab
Oil and Grease	kg/day	423.6	875.9	Weekly	Grab
Sulfide, Total (as S)	mg/l	Report	Report	Weekly	Grab
Chromium, total	kg/day	4.76	12.7	Monthly	24-Hour Composite
Dissolved Oxygen	mg/l	Minimum 2.0		Weekly	Grab

Fecal Coliform Colonies May 1-Sept.30	MPN	200	400	Weekly	Grab
Fecal Coliform Colonies Oct. 1-April 30	MPN	Report	400	Weekly	Grab
Ammonia as Nitrogen March 1-October 31	mg/l	37.5	75	Weekly	24-hour composite
Ammonia As Nitrogen March 1-October 31	kg/day	604	1422	Weekly	24-hour Composite
Ammonia As Nitrogen Nov. 1 - Feb. 28	mg/l	75	150	Weekly	24-Hour Composite
Ammonia As Nitrogen Nov. 1-Feb. 28	kg/day	1208	2844	Weekly	24-Hour Composite
Total Residual Chlorine March 1-October 31	mg/l	1.17	2.64	Weekly	Grab
Total Residual Chlorine Nov. 1-Feb 28	mg/l	0.65	1.46	Weekly	Grab
Pimephales promelas March 1-October 31	TUa		13.6	Quarterly	24-Hour Composite
Ceriodaphnia sp. March 1-October 31	TUa		13.6	Quarterly	24-Hour Composite

Pimephales promelas November 1- February 28	TUa		9	Quarterly	24-Hour Composite
Ceriodaphnia sp. November 1-February 28	TUa		9	Quarterly	24-Hour Composite

(b) All WET testing shall conform to the terms, conditions and schedules set forth in Attachment B. Any failure of the test using either species counts as a violation; failure for both species counts as two violations.

(c) WET testing shall be conducted quarterly, so long as one of the quarterly tests falls within the Winter season as defined in its NPDES permit. If IBP remains in continuous compliance with its WET limits requirements under Attachment C for two consecutive years (eight monitoring periods) after the new nitrification system becomes fully operational in accordance with Paragraph 4(h) of Attachment A, and if the new NPDES Permit has not yet become final, effective and no longer subject to appeal, then IBP may petition EPA to eliminate the WET limits set forth in Section II.A.4(a), supra.

(d) IBP shall be entitled to modify the WET limits and the daily and 30-day average ammonia mass limits set forth in the above Table on one occasion after the new nitrification system becomes fully operational in accordance with Paragraph 4(h) of Attachment A, and before IBP's new NPDES Permit becomes final, effective and no longer subject to review and appeal. Upon notice by IBP in accordance with Section X of the Consent Decree (Notices), the WET effluent limits and the 30-day average ammonia mass limits shall be modified to conform to the values for those limits set forth in Part I.C.1 of the Draft NPDES Permit, Attachment D to the Consent Decree, and the modified daily maximum ammonia mass effluent limits shall be: (i) May 1 through October 31 - 1,493 kg/day and (ii) November 1 through April 30 - 2,986 kg/day. The modification of these limits shall become effective on the first day of the month following the submission of IBP's notice to the United States, and shall remain in effect consistent with all other terms and conditions of this Consent Decree.

B. Expanded Reverse Osmosis Project

1. Project Description

Under Paragraph 13(f) of the Partial Consent Decree entered in this case on September 20, 2000, IBP within two hundred and forty (240) days after issuance of any preconstruction permits required by NDEQ or other regulatory approvals (or receipt of notice that no such permits are required), must complete construction and place into operation for a period of two years a reverse osmosis system designed to remove sulfates from the source water used by its facility. Under the terms of this SEP, IBP agrees to operate this system for an additional three (3) years, for a total of five (5) years of operation, agrees not to contest permit requirements governing the discharge of "reject water" from the reverse osmosis system, and agrees to submit to EPA enhanced reporting of operating information as provided below.

2. Reporting Requirements

IBP agrees to provide the following reports to EPA regarding the reverse osmosis project:

a. IBP shall submit an initial report within 90 days from start-up of the RO process containing the following information:

- ! Specifications (rated capacity, membrane type, number of stages, operating pressure, etc) of the equipment installed
- ! Purchase cost of the equipment
- ! A description of any ancillary equipment (i.e., raw water pretreatment, structure around the unit, storage tankage, etc.) and Cost for design, plumbing, electrical, insurance, etc. such that these costs plus the purchase costs equal the total installed cost.

b. IBP shall also submit annual reports on each anniversary of the Initial Report, containing the following information:

- ! Average daily volume of water treated

- ! Average daily volume of reject water
- ! Average daily power required in KW
- ! Average daily chemical costs (if any)
- ! Average daily labor hours for operation and routine maintenance
- ! Material and labor costs for any extraordinary maintenance (major equipment failure or membrane replacement)
- ! Summary of any performance data collected on either product water quality of reject stream characteristics

3. Cost

a. IBP estimates that annual operating costs for this SEP will be approximately \$440,000 per year, and documentation costs are \$0 per year. Accordingly, the estimated present after-tax value of these expenditures is approximately \$500,000.

b. EPA recognizes that this SEP is a technology-forcing project, and wishes to provide IBP with an incentive to reduce annual operating costs below the amount estimated in Paragraph 1, above. Accordingly, EPA will not require payment of any Shortfall for this SEP under Paragraph I.12 of this Attachment, provided that the SEP is successfully completed and cost documentation is provided. This agreement does not affect IBP's liability for any stipulated penalties that otherwise may accrue in connection with the performance of this SEP.