

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

THE UNITED STATES OF AMERICA, )  
and THE STATE OF NEBRASKA, )

Plaintiffs, )

v. )

M.G. WALDBAUM CO., )

Defendant. )

Civil Action No.

\_\_\_\_\_ )

**CONSENT DECREE**

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WHEREAS, Plaintiff, the United States of America (United States), on behalf of the United States Environmental Protection Agency (EPA), and the State of Nebraska, have each filed a Complaint in this action concurrently with this Consent Decree alleging that Defendant, M.G. Waldbaum Co. (Waldbaum), has violated certain provisions of Sections 301, 307 and 402 of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act, 33 U.S.C. §§ 1311, 1317 and 1342, as well as Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

WHEREAS, Defendant Waldbaum is a corporation organized and existing under the laws of the State of Nebraska. Waldbaum is engaged in egg production and processing with its principal place of business in Wakefield, Nebraska and main office located at 105 Main Street, Wakefield, Nebraska. Waldbaum owns and operates several large egg laying farms, pullet farms and egg processing facilities in or near the City of Wakefield, Nebraska.

WHEREAS, prior to April 1, 2006, Waldbaum discharged industrial wastewater to the City of Wakefield's publicly owned treatment works (POTW), under National Pollutant Discharge Elimination System (NPDES)/National Pretreatment Program Permit Number NE 0113735. Waldbaum was the sole industrial user, as defined by 40 C.F.R. § 403.3(j), of the City of Wakefield's nine industrial wastewater treatment lagoons. On or about April 1, 2006, the City of Wakefield transferred ownership of eight of its industrial wastewater lagoons to Waldbaum, at which time Waldbaum became the sole owner and operator of the eight industrial lagoons.

WHEREAS, the Complaints allege that at various times, Waldbaum caused the City of Wakefield to violate effluent limits and other conditions of the City's NPDES Permit Number NE 0049018 for its POTW, through pass through and/or interference at the POTW in violation of certain provisions of 33 U.S.C. §§ 1311, 1317, and 1342 and the Pretreatment Standards at 40 C.F.R. Part 403. The Complaints also allege that Waldbaum unlawfully discharged pollutants to waters of the United States from one of its egg laying farms (Husker Pride Farm), in violation of 33 U.S.C. § 1311(a); improperly land-applied clarifier rinsate in violation of its NPDES permit, under 33 U.S.C. § 1342; and violated the Clean Air Act, 42 U.S.C. § 7412(r), and its implementing regulations related to anhydrous ammonia in a process at one of its egg processing facilities.

WHEREAS, Waldbaum and the City of Wakefield entered into an agreement on September 30, 2005, providing for the financing, construction and operation of a new mechanical wastewater treatment facility that will be dedicated to the treatment of Waldbaum's industrial wastewater. Construction of the new mechanical wastewater treatment facility is underway, and the facility is expected to be operational in 2008.

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

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

## I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Clean Water Act, 33 U.S.C. §§ 1319(b) and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in the District of Nebraska pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. §§ 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because Defendant resides and is located in this judicial district and the violations alleged in the Complaints are alleged to have occurred in this judicial district. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendant consents to the Court's jurisdiction over this Consent Decree or such action and over Defendant, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaints state claims upon which relief may be granted pursuant to Sections 301, 307 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311, 1317 and 1342, and Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

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

## II. APPLICABILITY

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

5. Any transfer of ownership or operation of Defendant's Facilities located in the State of Nebraska to any other person, prior to the Termination of this Consent Decree pursuant to Section XX, must be conditioned upon the transferee's agreement to undertake the obligations required by this Consent Decree, as provided in a written agreement between Defendant and the proposed transferee, enforceable by the United States and the State as third-party beneficiaries of such agreement. At least thirty (30) days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the written agreement, to EPA Region VII, the United States Department of Justice, and the State of Nebraska, in accordance with Section XVI of this Consent Decree (Notices). Any attempt to transfer ownership or operation of the above referenced Facilities without complying with this Paragraph constitutes a violation of this Consent Decree. No transfer of ownership or operation of the above referenced Facilities, whether in compliance with this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of this Consent Decree are implemented.

6. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under Paragraphs 13, 14, 18, 19, 20, 21-29 or 31 of this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, successors, assigns, or by

any contractor retained to perform work required under the Paragraphs of this Consent Decree identified in Paragraph 6, to take any actions necessary to comply with the provisions of this Consent Decree.

### III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Clean Water Act or in the Clean Air Act, or in regulations promulgated thereunder, shall have the meanings assigned to them in the statutes or such regulations, unless otherwise provided in this Consent Decree.

Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "City" shall mean the City of Wakefield, Nebraska;
- b. "Consent Decree" or "Decree" shall mean this Decree;
- c. "Day" shall mean a calendar day unless expressly stated to be a business

day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

- d. "Defendant" or "Waldbaum" shall mean M.G. Waldbaum Co.;
- e. "Egg Processing Facilities" shall mean the two egg processing plants

owned by Waldbaum and located in the City of Wakefield, Nebraska;

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



g. “Facilities” shall mean Waldbaum’s Egg Processing Facilities and Farm Facilities located in the State of Nebraska. A list of each Facility’s address is included as Attachment A to this Consent Decree;

h. “Farm Facilities” shall mean the seven pullet farms and egg laying farms owned by Waldbaum, located in the State of Nebraska, and identified as Husker Pride Farm, Big Red Farm, Bloom “N” Egg Farm, Gardner Growers I, II, and III, and Plainview Pullets/Gardner Growers IV;

I. “Husker Pride Farm” shall mean the egg laying farm owned by Waldbaum, located at 58365 861 Road, Wakefield, Nebraska 68784.

j. “Industrial Wastewater Lagoon System” shall mean the eight industrial wastewater treatment lagoons owned and operated by Waldbaum in the City of Wakefield and lagoon I-7, owned by the City, that Waldbaum has the right to use pursuant to a contract with the City. The contract between Waldbaum and the City is included as Attachment B to this Consent Decree;

k. “NDEQ” shall mean the Nebraska Department of Environmental Quality, which is the agency authorized to administer the NPDES program in Nebraska under the provisions of Section 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b);

l. “NPDES” shall mean the National Pollutant Discharge Elimination System authorized under Section 402 of the Clean Water Act, 33 U.S.C. § 1342;

m. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral;

- n. "Parties" shall mean the United States, the State of Nebraska, and Defendant;
- o. "POTW" shall mean a publicly owned treatment works as defined at 40 C.F.R. § 403.3;
- p. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral;
- q. "State" shall mean the State of Nebraska;
- r. "United States" shall mean the United States of America, acting on behalf of EPA.

#### IV. CIVIL PENALTY

9. No later than twenty-eight (28) days after the Effective Date of this Consent Decree, Defendant shall pay the total sum of One Million Fifty Thousand Dollars (\$1,050,000) as an aggregate civil penalty to the United States and the State of Nebraska.

a. Defendant shall pay Five Hundred Twenty Five Thousand Dollars (\$525,000) as a civil penalty to the United States. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Defendant by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Nebraska following lodging of the Consent Decree. Any payment received by the United States after 4:00 p.m. Eastern Time shall be credited on the next business day. At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of

any transmittal documentation, which should reference DOJ case number 90-5-1-1-08346, to the United States and EPA in accordance with Section XVI of this Consent Decree (Notices).

b. Defendant shall pay Five Hundred Twenty Five Thousand Dollars (\$525,000) to the State of Nebraska. Payment of the civil penalty, made payable to “Dixon County, Nebraska,” shall be delivered to:

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

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

11. If Defendant fails to pay the civil penalties required to be paid under Section IV of this Consent Decree (Civil Penalty) when due, interest shall accrue on any amounts overdue to the United States under the terms of this Consent Decree at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961. Interest shall accrue on any amounts overdue to the State under the terms of this Consent Decree pursuant to Nebraska Code § 45-103. Interest is to be paid from the date said payment is due until all amounts owed are paid. Late payment of the civil penalties including accrued interest shall be made in accordance with Section IV, Paragraph 9, above. Stipulated Penalties shall be paid in accordance with Section X, Paragraph 38, below. All transmittal correspondence shall state that any such payment is for late payment

of the civil penalties due under this Consent Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 9 above.

#### V. COMPLIANCE REQUIREMENTS

12. Waldbaum shall comply with Sections 301(a) and 307(b) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1317(b), and Section 112(r)(1) of the Clean Air Act and with regulations promulgated thereunder at 40 C.F.R. §§ 68.67(f), 68.69(c), 68.79, 68.87(b)(5), 68.87(c), 122.23 and 403.5, and with Sections 81-1506(1)(a) and 81-1506(2)(c) of the Nebraska Environmental Protection Act.

13. Waldbaum shall comply with the terms, conditions and requirements of NPDES Permit NE 0113735, and any amendments, or modifications to NPDES Permit NE 0113735.

14. Where any compliance obligation under this Section requires Waldbaum to obtain a federal, state, or local permit or approval, Waldbaum shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Waldbaum may seek relief under the provisions of Section XI (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Waldbaum has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

#### VI. PLAN FOR STORAGE AND TREATMENT OF PROCESS WASTEWATER

15. Commencing on the effective date of this Consent Decree, Waldbaum shall not store, treat or discharge any industrial wastewater at or from any wastewater treatment lagoon

owned by the City of Wakefield, with the exception of Waldbaum's use of City lagoon I-7, in accordance with its contractual agreement with the City included as Attachment B to this Consent Decree.

16. Commencing on the effective date of this Consent Decree, Waldbaum's discharge to the Industrial Wastewater Lagoon System shall not exceed an average of 420,000 gallons per day during the period December 1 through March 1.

17. Interim dates and milestones for the new mechanical wastewater treatment facility, set forth in NPDES Permit NE 0113735, shall be enforceable under this Consent Decree. NPDES Permit NE 0113735 is included as Attachment C to this Consent Decree.

18. Beginning thirty (30) days after the effective date of this Consent Decree and continuing until the new mechanical wastewater treatment facility is operating in compliance with NPDES Permit NE 0113735, Waldbaum shall submit quarterly progress reports to EPA, Region VII and the State that describe, in detail, the construction and related activities that occurred at the facility during the reporting period, construction and related activities anticipated during the upcoming reporting period, and a description of any problems encountered or anticipated and how and by when these problems were or will be addressed. Waldbaum shall submit the progress reports on a quarterly basis for the periods of January-March, April-June, July-September and October-December. Records must be submitted on or before the 10th day of the month following the end of the period (April 10, July 10, October 10, and January 10).

19. Beginning on the effective date of this Consent Decree until the new mechanical wastewater facility is fully operational, Waldbaum shall conduct the following monitoring of wastewater at the Industrial Wastewater Lagoon System:

a. Every day, Waldbaum shall measure daily influent wastewater flow to the Industrial Wastewater Lagoon System. Waldbaum shall maintain a separate log of the daily influent flow measurements.

b. At least once each week during which there is a discharge by Waldbaum to Logan Creek, Waldbaum shall sample the effluent wastewater, and analyze the sample for Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), ammonia and dissolved oxygen in accordance with NPDES Permit NE 0113735. The sampling protocol and analysis shall be in accordance with NPDES Permit NE 0113735.

20. On a quarterly basis for the periods of January-March, April-June, July-September and October-December, Waldbaum shall provide the information described in the preceding Paragraph to the EPA, Region VII and the State contacts identified in Paragraph 78 of this Consent Decree, until such time as Waldbaum has a fully operational mechanical wastewater treatment facility. Records must be submitted on or before the 10th day of the month following the end of the period (April 10, July 10, October 10, and January 10).

#### VII. PLAN TO PREVENT DISCHARGE OF ANIMAL WASTE FROM FARM FACILITIES

21. Within thirty (30) days of the effective date of this Consent Decree, Waldbaum shall submit to the EPA, Region VII and NDEQ a report that describes, in detail, actions that Waldbaum has taken, will continue to take, and any action planned for the future, to prevent the

discharge of animal waste from Husker Pride Farm to waters of the United States. If the report describes future action, it shall include a schedule for implementation.

22. Within ninety (90) days of the effective date of this Consent Decree, Waldbaum shall initiate the application process with NDEQ for an NPDES Permit for Husker Pride Farm, pursuant to 40 C.F.R. § 122.23. If Waldbaum proposes to construct an animal waste control structure at Husker Pride Farm, it shall concurrently submit a complete application for a construction permit to NDEQ.

23. If Waldbaum proposes to construct an animal waste control structure at Husker Pride Farm, then beginning thirty (30) days after Waldbaum submits an application for a construction permit to NDEQ, Waldbaum shall submit written monthly progress reports to the EPA that describe, in detail, the construction and related activities at Husker Pride Farm that occurred during the reporting period, construction and related activities anticipated during the upcoming reporting period, and a description of any problems encountered or anticipated and how and by when these problems were/will be addressed. Waldbaum shall continue to submit the monthly progress reports until Waldbaum submits a Notice of Construction Completion to the EPA.

24. If Waldbaum proposes to construct an animal waste control structure at Husker Pride Farm, Waldbaum shall submit to the EPA a Notice of Construction Completion within thirty (30) days of when the construction of all animal waste control structures, authorized by the construction permit issued by NDEQ, is completed at Husker Pride Farm. This notification shall be in writing and shall include as-built drawings of the constructed improvements.

25. Commencing thirty (30) days from the effective date of this Consent Decree and until such time as Waldbaum is issued an NPDES Permit for Husker Pride Farm, as required by this Consent Decree, Waldbaum shall maintain the following operational records for Husker Pride Farm: 1) land application and/or give away records, and/or waste transfer documents including dates, locations where the waste was applied or the destination if waste is transferred to a third party, amounts applied or transferred, application rates, and name and address of recipients; 2) any manure testing results; and 3) precipitation records. Waldbaum shall submit copies of these records to the EPA, Region VII on a quarterly basis for the periods of January-March, April-June, July-September and October-December. Records must be submitted on or before the 10th day of the month following the end of the period (April 10, July 10, October 10, and January 10). Upon issuance of the NPDES Permit, Waldbaum shall maintain and submit records as required by the NPDES Permit.

26. Upon issuance of an NPDES Permit for Husker Pride Farm to Waldbaum by NDEQ, Waldbaum shall comply with the requirements established by the NPDES Permit.

27. Within ninety (90) days of the effective date of this Consent Decree, Waldbaum shall develop and implement a Manure Management Plan for each of its Farm Facilities, other than Husker Pride Farm. Also within ninety (90) days of the effective date of this Consent Decree, Waldbaum shall submit copies of each Manure Management Plan to EPA, Region VII and NDEQ. Each Manure Management Plan shall:

a. explain in detail how Waldbaum intends to store, utilize, and/or dispose of the manure generated at the Farm Facility;



b. specifically describe the steps Waldbaum will take to ensure that animal waste is not discharged from the Farm Facility into waters of the United States; and

c. if Waldbaum constructs livestock waste control facilities to manage the manure at any Farm Facility, then the applicable Manure Management Plan must contain a narrative description of the livestock waste control facility and how it will function and operate.

28. If any of the manure generated by Waldbaum at a Farm Facility is land applied, then Waldbaum must meet the requirements of 40 C.F.R. § 122.42(e)1(vi)-(ix) and Nebraska's state technical standards for nutrient management currently found in Title 130, Chapter 14 of the Nebraska Administrative Code.

29. Upon implementation of the Manure Management Plan at each Farm Facility, Waldbaum will keep a copy of the Manure Management Plan at the corresponding Farm Facility and will comply with the record keeping requirements for land application areas found at 40 C.F.R. § 412.37(c). Commencing on the effective date of this Consent Decree, Waldbaum shall submit reports every six (6) months to EPA and NDEQ that describe the actions Waldbaum has performed to develop and implement the Manure Management Plans described above and or any actions Waldbaum anticipates it will perform during the next reporting period.

30. The requirement to submit Manure Management Plans pursuant to this Consent Decree does not relieve Waldbaum of any obligations under the Clean Water Act or implementing regulations, or under any other federal, state, or local law, regulation, permit, or other requirement.

### VIII. PLAN FOR PROPER LAND-APPLICATION OF CLARIFIER RINSATE

31. The Plan entitled "Proposal to Land-Apply Clarifier Rinsate," approved by NDEQ on September 14, 2006, is hereby incorporated into this Consent Decree and enforceable hereunder, and shall be implemented by Waldbaum. The Plan shall be followed when land-application is the option selected by Waldbaum for management of clarifier rinsate. The Plan is included in this Consent Decree as Attachment D.

### IX. REPORTING REQUIREMENTS

32. If Waldbaum violates, or has reason to believe that it may violate, any requirement of this Consent Decree, NPDES Permit NE 0113735 or the NPDES Permit for Husker Pride Farm, Waldbaum shall notify EPA, Region VII and the State of such violation or potential violation and its likely duration, in writing, within five (5) days of the day Waldbaum first becomes aware of the violation or the potential violation. The notice shall include an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Waldbaum shall include a statement to that effect in the report. Waldbaum shall diligently investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) days of the day Waldbaum becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Waldbaum of its obligation to provide the requisite notice for purposes of Section XI (Force Majeure).

33. Reports required under this Section shall be submitted to the persons designated in Section XVI of this Consent Decree (Notices).

34. Each report submitted by Waldbaum under this Section shall be signed by an authorized official, as defined at 40 C.F.R. § 122.22, and shall include the 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.

Upon proof acceptable to EPA and the State, this certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

35. The reporting requirements of this Consent Decree do not relieve Waldbaum of any reporting obligations required by the Clean Water Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

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

#### X. STIPULATED PENALTIES

37. Waldbaum shall be liable for Stipulated Penalties, 50% to the United States and 50% to the State of Nebraska, for violations of this Consent Decree as specified below, unless excused under Section XI (Force Majeure). A violation includes failing to perform any

obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

38. A stipulated penalty of \$5,000 shall accrue per each day that any civil penalty payment required by Paragraph 9 of this Consent Decree is late, in addition to accrued interest on any amounts overdue in accordance with Paragraph 11 of this Consent Decree.

39. The following Stipulated Penalties shall accrue for violations of the effluent limits in NPDES Permit NE 0113735 for Outfalls 7L5 and 9L5:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation</u>
Daily Maximum Effluent Limit	\$500 (per violation per day)
7-Day Average Limit	\$1,000 (per violation for entire 7-day period)
30-Day Average Limit	\$4,500 (per violation for entire 30-day period)

40. A total stipulated penalty of \$50,000 shall be owed if Waldbaum exceeds the average limit of raw wastewater discharge to the Industrial Wastewater Lagoon System allowed for the period described in Paragraph 16 of this Consent Decree.

41. The following Stipulated Penalties shall accrue per violation per day for each violation of a significant interim date or milestone for the new mechanical wastewater treatment facility, set forth in NPDES Permit NE 0113735, and incorporated into this Consent Decree pursuant to Paragraph 17.

<u>Milestone Missed By:</u>	<u>Penalty Per Violation Per Day</u>
1-45 days	\$1,000

46-75 days	\$2,000
76 or more days	\$3,000

42. The following Stipulated Penalties shall accrue per violation per day for each violation of a significant interim date, milestone or requirement identified in the Plan to Prevent Discharge of Animal Waste from Husker Pride Farm, as identified in Paragraphs 21, 22, 24, 25 and 26 of this Consent Decree:

<u>Milestone Missed By:</u>	<u>Penalty Per Violation Per Day</u>
1-30 days	\$1,250
31-60 days	\$2,500
61 or more days	\$3,650

43. The following Stipulated Penalties shall accrue per violation per day for the failure to submit a Manure Management Plan for each Farm Facility, other than Husker Pride Farm, in accordance with Paragraph 27 above.

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1-30 days	\$500
31-60 days	\$1,000
61 or more days	\$1,500

44. The following Stipulated Penalties shall accrue per day for land application of clarifier rinsate at a rate that exceeds the proper agronomic rate, as required by the Plan included in this Consent Decree as Attachment D.

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1-10 days	\$500

11-30 days	\$1,000
31 or more days	\$1,500

45. The following Stipulated Penalties shall accrue per violation per day for each violation of the monitoring and record keeping requirements contained in Paragraph 19, Subparagraphs a and b of this Consent Decree:

<u>Period of Inadequate Monitoring or Record Keeping</u>	<u>Penalty Per Violation Per Day</u>
1-30 days	\$1,000
31-60 days	\$2,000
61 or more days	\$3,000

46. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting requirements of Section IX (Reporting Requirements) and Paragraphs 18 (Mechanical Wastewater Treatment Facility Progress Reports), 20 (Industrial Wastewater Lagoon System Reports), 23 (Husker Pride Farm Progress Reports) and 29 (Manure Management Record Keeping and Reporting) of this Consent Decree:

<u>Duration of Late Report</u>	<u>Penalty Per Violation Per Day</u>
1-30 days	\$1,000
31-60 days	\$2,000
61 or more days	\$3,000

47. Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for each individual violation of this Consent Decree. Any

Stipulated Penalties shall become due and payable within thirty (30) days after Defendant receives the United States' written demand.

48. Stipulated Penalties shall continue to accrue as provided in Paragraph 47, above, during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States and the State within twenty-eight (28) days of the effective date of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty-three (63) days of receiving the Court's decision or order, except as provided in Subparagraph c, below;

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within fourteen (14) days of receiving the final appellate court decision.

49. Defendant shall, as directed by the United States, pay Stipulated Penalties owing to the United States by EFT in accordance with Section IV, Paragraph 9, above or by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ number 90-5-1-1-08346, and delivered to the Financial Litigation Unit of the United States Attorney's Office for the District of Nebraska, at 1620 Dodge Street, Suite 1400, Omaha,

Nebraska, 68102-1506. Defendant shall pay Stipulated Penalties owing to the State in accordance with Section IV, Paragraph 9, above.

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

51. Interest computed in accordance with Paragraph 11 of this Consent Decree shall accrue and be paid by Defendant for any late payment of Stipulated Penalties.

52. Subject to the provisions of Section XIV of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of Section 301, 307 or 402 of the Clean Water Act, 33 U.S.C. §§ 1311, 1317 or 1342, or Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), or regulations promulgated thereunder, Defendant shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

#### XI. FORCE MAJEURE

53. A "force majeure event" is any event beyond the control of Defendant, its contractors and consultants, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial



circumstances shall not, in any event, be considered “force majeure” events. In addition, failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree or failure of Defendant to approve contracts, shall not, in any event, be considered “force majeure” events. However, if a permitting authority fails to issue, renew or modify--or delays in issuing, renewing or modifying--a lawful permit, order or other action required for any part of the work under this Consent Decree, and Defendant has taken all actions necessary to obtain all such permits or approvals in accordance with Paragraph 14 of this Consent Decree, Defendant is entitled to seek relief under the “force majeure” provisions of this Consent Decree.

54. Defendant shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than seventy-two (72) hours after the time Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendant shall also provide written notice, as provided in Section XVI of this Consent Decree (Notices), within seven (7) days of the time Defendant first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendant’s past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendant’s rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendant from asserting any claim of force majeure.

55. If the United States agrees that a force majeure event has occurred, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the United States for the period of delay directly or indirectly

attributable to the force majeure event. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XIX of this Consent Decree (Modification).

56. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendant, the United States' position shall be binding, unless Defendant invokes Dispute Resolution under Section XII of this Consent Decree. In any such dispute, the provisions of Section XII (Dispute Resolution) shall apply and Defendant bears the burden of proving that each claimed force majeure event is a force majeure event; that Defendant gave the notice required by Paragraph 54; that the force majeure event caused any delay Defendant claims was attributable to that event; and that Defendant exercised best efforts to prevent or minimize any delay caused by the event.

## XII. DISPUTE RESOLUTION

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

58. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty-

one (21) days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen (14) days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

59. Defendant shall invoke formal dispute resolution procedures by, within the time period provided in the preceding Paragraph, serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

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

61. Defendant may obtain judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVI of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within twenty-one (21) days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in

dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

63. In the event of judicial review under this Section, Defendant shall bear the burden of demonstrating by a preponderance of the evidence that actions or positions taken by Defendant are in compliance with the terms, conditions and requirements of this Consent Decree. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law. Waldbaum reserves the right to argue that its position is based on a reasonable interpretation of a statute, regulation, or permit, or a reasonable interpretation of this Consent Decree and that the United States' litigation position is not entitled to any deference.

64. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until a final resolution of the dispute so provides. A final resolution shall mean an agreement reached through informal negotiations; the United States' binding Statement of Position in accordance with Paragraph 58; the United States' binding Statement of Position in accordance with Paragraph 60; or a final judicial decision in accordance with Paragraphs 61 - 63. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day

of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 48, above. If Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

### XIII. INFORMATION COLLECTION AND RETENTION

65. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry to any facility covered by this Consent Decree, during business hours, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representative, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data, related to this Consent Decree; and
- e. assess Defendant's compliance with this Consent Decree.

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

67. Until five (5) years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors retained to perform work required under the Paragraphs of this Consent Decree identified in Paragraph 6, and agents to retain, all non-identical copies of all records and documents (including records or documents in electronic form) in its or its

contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This record retention requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States or the State may request copies of any documents or records required to be maintained under this Paragraph.

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

69. Neither this Section nor anything else in this Consent Decree in any way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, or limit or

affect any duty or obligation of Defendant to maintain records or information imposed by applicable federal or state laws, regulations, or permits.

#### XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

70. This Consent Decree resolves the claims for civil penalties for the violations alleged in the Complaints filed by the United States and the State in this action through the date of entry of this Consent Decree.

71. The United States and the State each covenant not to bring a civil action or take civil administrative action against Defendant, its officers, employees or successors, for the claims alleged, through the effective date of this Consent Decree, in the Complaints filed by the United States and the State in this action, or in connection with the following: July 12, 2001, August 29, 2001, and May 23, 2003 Notices of Violation issued to the City of Wakefield by the NDEQ; July 2, 2003 Notice of Potential Violation issued to Waldbaum (including Husker Pride Farm and Big Red Farm) by the EPA; August 2003 Notice of Potential Violation issued to the City of Wakefield by the EPA; May 11, 2004 Findings of Violation and Order for Compliance issued to Waldbaum by the EPA; June 23, 2004 Notice of Violation issued to Waldbaum by the NDEQ; June 23, 2004 Notice of Violation issued to the City of Wakefield by the NDEQ; June 24, 2004 Complaint, Compliance Order and Notice of Opportunity for Hearing issued to Waldbaum by the NDEQ; June 24, 2004 Complaint, Compliance Order and Notice of Opportunity for Hearing issued to the City of Wakefield by the NDEQ; and October 3, 2005 Notice of Violation issued jointly to the City of Wakefield and Waldbaum by the NDEQ.

72. This Consent Decree shall not be construed to prevent or limit the rights of the United States, or the State to obtain penalties or injunctive relief under the Clean Water Act or

the Clean Air Act, or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraphs 70 and 71 above.

73. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, or the Clean Air Act, 42 U.S.C. § 7401, *et seq.*

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

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

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



XV. COSTS

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

XVI. NOTICES

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

To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
PO Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
RE: DOJ Number 90-5-1-1-08346

To EPA:

Paul T. Marshall, P.E.  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency, Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and

Elizabeth Huston  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

To the State:

Steven J. Moeller  
Attorney, NDEQ Legal Services  
Nebraska Department of Environmental Quality  
1200 N Street, Suite 400  
PO Box 98922  
Lincoln, NE 68509-8922

and

Jodi M. Fenner  
Assistant Attorney General  
Chief, Agriculture, Environment, and Natural Resources Division  
2115 State Capitol Building  
Lincoln, Nebraska 68509-8920

To Defendant:

Mark D. Witmer  
Corporate Secretary  
M.G. Waldbaum Company  
Suite 400  
301 Carlson Parkway  
Minneapolis, Minnesota 55305

and

Carolyn V. Wolski  
Leonard, Street and Deinard  
Suite 2300  
150 South Fifth Street  
Minneapolis, Minnesota 55402

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

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

#### XVII. EFFECTIVE DATE

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

#### XVIII. RETENTION OF JURISDICTION

82. The Court shall retain jurisdiction over this case until termination of this Consent Decree for the purpose of resolving disputes arising under this Consent Decree or entering orders modifying this Consent Decree pursuant to Sections XII and XIX, and for the purpose of effectuating or enforcing compliance with the terms of this Consent Decree.

#### XIX. MODIFICATION

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

#### XX. TERMINATION

84. Five (5) months after Waldbaum's engineer has certified that the new mechanical wastewater treatment facility is operational, such that it is capable of treating raw wastewater and operating all process equipment, and provided that Defendant has satisfactorily completed performance of its obligations required by this Consent Decree, and that Defendant has paid the civil penalties, and any accrued Stipulated Penalties as required by this Consent Decree, Defendant may serve upon the United States and the State a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

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

86. If the United States, after consultation with the State, does not agree that the Consent Decree may be terminated, it shall provide Defendant with written notice of its decision, along with the reasons for its decision. After Defendant receives the written notice, Defendant may move the Court for an Order terminating the Consent Decree. The United States and the State shall have the right to oppose Defendant's motion. If the United States or the State opposes Defendant's motion to terminate the Consent Decree, Defendant shall have the burden of proof by a preponderance of the evidence that Defendant has satisfactorily complied with the requirements of the Consent Decree.

#### XXI. PUBLIC PARTICIPATION

87. 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 indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice.

## XXII. SIGNATORIES/SERVICE

88. The person signing this Consent Decree on behalf of the Defendant certifies that he is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Defendant to this document. The Assistant Attorney General or her delegate on behalf of the United States and the Attorney General of Nebraska or his delegate on behalf of the State of Nebraska certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

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

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

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

## XXIII. INTEGRATION

92. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the

settlement embodied herein. No other document, nor any agreement, representation, agreement, inducement, understanding, or promise constitutes any part of this consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XXIV. FINAL JUDGMENT

93. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the claims alleged in the complaints for violations through the date of entry.

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

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: \_\_\_\_\_

\_\_\_\_\_  
SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice  
Washington, D.C. 20530

Date: \_\_\_\_\_

\_\_\_\_\_  
ERIKA M. ZIMMERMAN  
Trial Attorney, Oregon Bar No. 05500  
Environmental Enforcement Section  
Environmental and Natural Resources Division  
United States Department of Justice  
PO Box 7611, Ben Franklin Station  
Washington, D.C. 20044  
Telephone: (202) 514-5270  
Fax: (202) 514-4180

FOR THE UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF NEBRASKA:

JOE W. STECHER  
United States Attorney  
District of Nebraska

Date: \_\_\_\_\_

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



FOR PLAINTIFF U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION VII:

Date: \_\_\_\_\_

\_\_\_\_\_  
JOHN B. ASKEW  
Regional Administrator  
U.S. Environmental Protection Agency, Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Date: \_\_\_\_\_

\_\_\_\_\_  
ELIZABETH HUSTON  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: \_\_\_\_\_

\_\_\_\_\_  
GRANTA Y. NAKAYAMA  
Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
Ariel Rios Building, 2201A  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

FOR PLAINTIFF STATE OF NEBRASKA:

JON BRUNING  
Attorney General of Nebraska

Date: \_\_\_\_\_

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JODI M. FENNER  
NE Bar No. 22038  
Assistant Attorney General  
Chief, Agriculture, Environment, and  
Natural Resources Division  
2115 State Capitol Building  
Lincoln, Nebraska 68509-8920  
Telephone: (402) 471-2682  
Fax: (402) 471-2957

NATALEE J. HART  
NE Bar No. 22716  
Assistant Attorney General  
Agriculture, Environment, and  
Natural Resources Division  
2115 State Capitol  
Lincoln, NE 68509

FOR DEFENDANT M.G. WALDBAUM CO.:

Date: \_\_\_\_\_

\_\_\_\_\_  
JOHN D. REEDY  
Vice President, Finance  
M.G. Waldbaum Co.  
c/o Michael Foods, Inc.  
Suite 400  
301 Carlson Parkway  
Minnetonka, Minnesota 55305

Agent Authorized to Accept Service on Behalf of the M.G. Waldbaum Co., Relating to this  
Consent Decree:

Name: Carolyn V. Wolski  
Phone Number: (612) 335-1641  
Email: carolyn.wolski@leonard.com