

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, and)	
)	
THE STATE OF NEBRASKA)	
)	
Plaintiffs,)	Civil Action No.
)	
v.)	
)	
SWIFT BEEF COMPANY)	
)	
Defendant.)	
)	
_____)	

JOINT COMPLAINT

The United States of America, by authority of the Attorney General of the United States, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Nebraska, by authority of the Attorney General of the State of Nebraska, acting at the request of the Nebraska Department of Environmental Quality (“NDEQ”) file this Joint Complaint and allege as follows:

STATEMENT OF THE CASE

1. This is a civil action seeking civil penalties and injunctive relief under Sections 301(a), 307(d) and 309(b)&(d) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a), 1317, and 1319(b)&(d) and Neb. Rev. Stat. §§ 81-1508 and 81-1508.02(2), against Defendant Swift Beef Company (“Swift”) arising from Swift’s discharges of pollutants into the waters of the United States and the State from its beef processing facility in Grand Island, Nebraska.

JURISDICTION, AUTHORITY, NOTICE AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355.
3. The United States has authority to bring this action on behalf of the Administrator of EPA under Section 506 of the CWA, 33 U.S.C. § 1366, and under 28 U.S.C. §§ 516 and 519.
4. The State of Nebraska has authority to bring this action on behalf of NDEQ pursuant to the Nebraska Environmental Protection Act, Neb. Rev. Stat §§ 81-1501 to -1532. Specifically, Neb. Rev. Stat. § 81-1508(2) states that “[i]t shall be the duty of ... the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to assure compliance with the act[.]” Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), in June of 1974 EPA authorized Nebraska to administer the NPDES program and later authorized Nebraska to administer the Pretreatment Program in September of 1984. National Pollutant Discharge Elimination System Protocol Working Agreement Between the Regional Administrator Region VII U.S. Environmental Protection Agency and the Director of the Department of Environmental Control (June 12, 1974); Modification to the National Pollutant Discharge Elimination System Memorandum of Agreement Between the State of Nebraska and the United States Environmental Protection Agency, Region VII (Sept. 7, 1984). EPA retains concurrent enforcement authority under Sections 309 and 402(i) of the CWA, 33 U.S.C. §§ 1319 and 1342(i).
5. Venue is proper in this judicial district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), as this is a judicial district within which Defendant is doing business and within which the claim arose.

DEFENDANT

6. Swift Beef Company is a corporation organized and existing under the laws of the State of Delaware with headquarters in Greeley, Colorado.

7. Defendant is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and in Neb. Rev. Stat. § 81-1502(10).

8. At all relevant times, Defendant owned and operated a beef processing facility (“the Facility”) located at 555 South Stuhr Road, Grand Island, Nebraska (Hall County).

STATUTORY FRAMEWORK

9. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. CWA § 101, 33 U.S.C. § 1251(a).

10. To accomplish this goal, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source into waters of the United States except as authorized by, and in compliance with, a permit issued pursuant to certain enumerated Sections of the CWA, including Section 402 of the CWA, 33 U.S.C. § 1342. Neb. Rev. Stat. § 81-1506(2) similarly states that “[i]t shall be unlawful for any person to: (a) [d]ischarge any pollutant into waters of the state without obtaining a permit as required by the National Pollutant Discharge Elimination System...” and “(c) [i]ncrease in volume or strength any waste in excess of permitted discharges...”

11. “Pollutant” is defined as to include, *inter alia*, “chemical wastes, biological materials ... and industrial ... waste.” 42 U.S.C. § 1362(6). Neb. Rev. Stat. § 81-1502(20) defines “water pollution” as “the manmade or man-induced alteration of the chemical, physical, biological or radiological integrity of water.”

12. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Administrator of EPA may issue a National Pollutant Discharge Elimination System (“NPDES”) permit, which authorizes the discharge of pollutants into waters of the United States. Section 402 of the CWA, 33 U.S.C. § 1342, directs the Administrator of EPA to impose conditions for NPDES permits, including conditions on data and information collection, reporting, and such other requirements as the Administrator deems appropriate.

13. Section 307(b) of the CWA, 33 U.S.C. § 1317(b), authorizes the adoption of regulations establishing pretreatment standards for the introduction of pollutants into Publicly Owned Treatment Works (“POTWs”) which are not susceptible to treatment at the POTW or which would interfere with the operation of the POTW. The pretreatment standards have been promulgated at 40 C.F.R. Part 403 (hereinafter “Pretreatment Regulations”).

14. The Pretreatment Regulations provide that: “A User may not introduce into a POTW any pollutant(s) which cause Pass Through or Interference.” 40 C.F.R. § 403.5(a)(1); 119 Neb. Admin. Code § 26-002.01 (containing a similar prohibition). In addition, 40 C.F.R. § 403.5(b)(4) and 119 Neb. Admin. Code § 26-002.02D specifically prohibit the introduction into a POTW of “(a)ny pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW.”

15. The regulations at 40 C.F.R. §403.3(j) define the terms “Industrial user” and “user” to mean “a source of Indirect Discharge” which is in turn defined in 40 C.F.R. § 403.3(i) as “the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the [CWA].” According to 119 Neb. Admin. Code § 1-054, “industrial user” is defined as “a source of indirect discharge which does not constitute a

discharge of pollutants” and § 1-053 defines “indirect discharger” as “a non-domestic discharger introducing pollutants to a publicly owned treatment works.”

16. The Term “Interference” means:

a discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit

40 C.F.R. 403.3(k); 119 Neb. Admin. Code, §1-056.

17. The Term “Pass Through” means:

a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation).

43 C.F.R. § 403.3(p); 119 Neb. Admin. Code § 1-084.

18. Pursuant to Neb. Rev. Stat. § 81-1507(4), the director of NDEQ has the authority to issue an emergency order, effective immediately upon issuance, “[w]henver the director finds that an emergency exists requiring immediate action.” Pursuant to Neb. Rev. Stat. § 81-1508.02(1)(b), it is unlawful to violate any order of the director.

19. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which a compliance order under Section 309(a) is also possible. Section 309(a)(3), 33 U.S.C. § 1319(a)(3), authorizes EPA to issue compliance orders whenever it finds that any person has violated Section 301 of the CWA or any condition or limitation in a permit issued pursuant to Section 402 of the CWA. In the case of a violation of the Nebraska Environmental Protection Act or

rule or regulation promulgated thereunder, Neb. Rev. Stat. § 81-1507(1) states that the director “may cause a written complaint to be served upon the alleged violator ... [which] shall order that necessary corrective action be taken within a reasonable time” or the director “may bring a criminal or civil action ...” Additionally, Neb. Rev. Stat. § 81-1508(2) states that the director of NDEQ “may petition the district court for an injunction.”

20. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by the Debt Collection Improvement Act of 1996, 28 U.S.C.A. § 2461 note, and 40 C.F.R. Part 19.4, provides that any person who violates Sections 301 or 307 of the CWA, or any permit condition or limitation implementing such section in an NPDES permit or any requirement imposed in an EPA approved pretreatment program, shall be subject to a civil penalty not to exceed \$32,500 per day for each violation that occurred between March 15, 2004, and January 12, 2009, and \$37,500 per day for each violation that occurred after January 12, 2009. A violation of any water quality standard, any permit limitation, or any rule or regulation promulgated pursuant to the Nebraska Environmental Protection Act “shall subject a person to a civil penalty of no more than ten thousand dollars per day. In case of a continuing violation, each day shall constitute a separate offense.” Neb. Rev. Stat. § 81-1508.02.

21. Violations of monthly average discharge limits in an NPDES permit constitute a violation of the Permit on each day of the month in which the violation occurred. Violations of weekly average discharge limits likewise constitute a violation on each day during the week of the violation. Neb. Rev. Stat. § 81-1508.02(2).

22. Neb. Rev. Stat. § 81-1508(1) states that, when a person violates the Nebraska Environmental Protection Act or fails to perform a duty thereunder, and such violation or failure results in the death of fish or other wildlife, that person shall be liable to the state for the cost of replacing the fish or wildlife in addition to any other penalties assessed.

GENERAL ALLEGATIONS

23. As part of the operation of the Facility, Defendant generates wastewater containing “pollutants,” as that term is defined at Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2. These pollutants include, but are not limited to, Biochemical Oxygen Demand (“BOD”), Total Suspended Solids (“TSS”), Ammonia, Blood, Oil, and Grease.

24. On January 1, 2004, NDEQ issued to Defendant an NPDES/NPP permit, Permit Number NE0113891, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 (hereinafter the “2004 Permit”).

25. The 2004 Permit authorized Defendant to discharge non-contact cooling water directly to the Wood River through a drainage ditch (“Outfall 001”), which empties into the Wood River.

26. The 2004 Permit also permitted Defendant to discharge facility wastewater from its plant’s treatment lagoons through Outfall 002 to the City of Grand Island’s publicly owned treatment works (hereafter “the Grand Island POTW”), which discharges to the Wood River.

27. All of the discharges authorized by the 2004 Permit were subject to certain conditions and limitations set forth in the permit.

28. The 2004 Permit expired on December 31, 2008, and was administratively extended until May 1, 2009 on which date NDEQ re-issued the NPDES Permit to Swift, Permit Number NE0113891, (hereinafter the “2009 Permit”). The 2009 Permit also authorizes Defendant to discharge to the Wood River and Grand Island POTW through Outfalls 001 and 002 respectively, subject to certain conditions and limitations set forth in that new Permit.

29. The Grand Island POTW is a “Publicly Owned Treatment Works” within the meaning of 40 C.F.R. § 403.3(q) and 119 Neb. Admin. Code § 1-096.

30. The Defendant's Facility in Grand Island, Nebraska is a "user" or "industrial user," as defined by 40 C.F.R. § 403.3(j), 33 U.S.C. § 1362(18), and 119 Neb. Admin. Code § 1-054 of the Grand Island POTW, and discharges non-domestic "pollutants" thereto, as defined at 33 U.S.C. § 1362(6) and 119 Neb. Admin. Code § 1-089, including but not limited to BOD, TSS, Ammonia, Blood, Oil, and Grease.

31. Outfalls 001 and 002 are each a "point source" as defined at Section 502(14) of the CWA, 33 U.S.C. § 1362(14) and Neb. Rev. Stat. § 81-1502(22).

32. The Wood River is a perennial river that flows into the Platte River which in turns flows into the Missouri River.

33. At all relevant times, Defendant was involved in all significant operational decisions at the Facility, including, but not limited to the discharges through Outfall Nos. 001 and 002.

CLAIMS FOR RELIEF

FIRST CLAIM

UNLAWFUL PASS THROUGH OR INTERFERENCE WITH OPERATION OF GRAND ISLAND'S POTW.

34. Paragraphs 1 through 33 are re-alleged and incorporated by reference as if fully set forth below.

35. The General Pretreatment Regulations found at 40 C.F.R. Part 403.5, 119 Neb. Admin. Code § 26-002.01, and Part IIB of the 2004 Permit prohibited the Defendant from introducing pollutants into the Grand Island POTW which cause "pass through" or "interference" with the operations of the Grand Island POTW and which contribute to the discharge of

pollutants from the Grand Island POTW in excess of the numeric and narrative effluent limitations set forth in the City of Grand Island's NPDES permit for the POTW.

36. Between July 2007 and March 2008, Defendant discharged pollutants through Outfall 002 to the Grand Island POTW in such amounts and concentrations that "passed through" and caused "interference" with the Grand Island POTW within the meaning of 40 C.F.R. § 403.3(k)&(p), including:

- (1) July 1 through July 7, 2007
- (2) August 9 through August 15, 2007
- (3) December 21 through December 29, 2007
- (4) February 9 through February 29, 2008
- (5) March 21 through March 31, 2008

Defendant caused these pass through and interference events in violation of the 2004 Permit and Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) & 1317(d), 40 C.F.R. Part 403.5, Neb. § 81-1506(2)(d) and 119 Neb. Admin. Code § 26-002.01.

37. Based on these violations, the Defendant is liable for penalties under Section 309(d) of the CWA and Neb. Rev. Stat. § 81-1508.02, as more fully described in paragraph 20. Additionally, Plaintiffs are entitled to injunctive relief, as described in paragraph 19, against the Defendant, restraining further violations of, and requiring compliance with, the 2009 Permit, CWA, and the Nebraska Environmental Protection Act.

SECOND CLAIM

DISCHARGE WITHOUT A PERMIT

38. Paragraphs 1 through 33 are re-alleged and incorporated by reference as if fully set forth below.

39. On April 22, 2008, Defendant discharged oil, grease, and blood (exerting BOD and TSS) into the Wood River through Outfall 001 without a permit in violation of Section 301(a) of the CWA and Neb. Rev. Stat. § 81-1506(2)(a).

40. On March 31, 2009, Defendant discharged tallow through Outfall 001 without a permit in violation of Section 301(a) of the CWA and Neb. Rev. Stat. § 81-1506(2)(a).

41. On February 6, 2011, there was an effluent release containing pollutants from a manhole in violation of Section 301(a) of the CWA and Neb. Rev. Stat. § 81-1506(2)(a).

42. Based on these violations, the Defendant is liable for penalties under Section 309(d) of the CWA and Neb. Rev. Stat. § 81-1508.02, as more fully described in paragraph 20. Additionally, Plaintiffs are entitled to injunctive relief, as described in paragraph 19, against the Defendant, restraining further violations of, and requiring compliance with, the 2009 Permit, CWA, and the Nebraska Environmental Protection Act.

THIRD CLAIM

DISCHARGE IN EXCESS OF MONTHLY AVERAGE AMMONIA CONCENTRATION LIMIT

43. Paragraphs 1 through 33 are re-alleged and incorporated by reference as if fully set forth below.

44. The 2009 Permit limits the monthly average concentration of ammonia discharges through Outfall 001 to 0.05 mg/l.

45. On numerous occasions between May of 2009 and the present, Defendant discharged ammonia through Outfall 001 into the Wood River in excess of the 0.05 mg/l monthly average concentration limit in the 2009 Permit, violating the 2009 Permit, Section 301(a) of the CWA, and Neb. Rev. Stat. § 81-1508.02(1)(b).

46. Based on these violations, the Defendant is liable for penalties under Section 309(d) of the CWA and Neb. Rev. Stat. § 81-1508.02, as more fully described in paragraph 20. Additionally, Plaintiffs are entitled to injunctive relief, as described in paragraph 19, against the Defendant, restraining further violations of, and requiring compliance with, the 2009 Permit, CWA, and the Nebraska Environmental Protection Act.

FOURTH CLAIM

DISCHARGE IN EXCESS OF MONTHLY AND DAILY OIL AND GREASE LIMITS

47. Paragraphs 1 through 33 are re-alleged and incorporated by reference as if fully set forth below.

48. The 2009 Permit limits the Defendant's discharge of oil and grease through Outfall 002 to the Grand Island POTW to a monthly average of 4,610 lb/day and a daily maximum of 9,221 lbs/day.

49. In January and February of 2010, Defendant's monthly average discharge of oil and grease through Outfall 002 to the Grand Island POTW exceeded the 4,610 lb/day limitation in violation of the 2009 Permit, Section 301(a) of the CWA, and Neb. Rev. Stat. § 81-1508.02(1)(b).

50. In February of 2010, Defendant's daily maximum discharge of oil and grease through Outfall 002 to the Grand Island POTW exceeded the 9,221 lbs. limitation in violation of the 2009 Permit, Section 301(a) of the CWA and Neb. Rev. Stat. § 81-1508.02(1)(b).

51. Based on these violations, the Defendant is liable for penalties under Section 309(d) of the CWA and Neb. Rev. Stat. § 81-1508.02, as more fully described in paragraph 20. Additionally, Plaintiffs are entitled to injunctive relief, as described in paragraph 19, against the

Defendant, restraining further violations of, and requiring compliance with, the 2009 Permit, CWA, and the Nebraska Environmental Protection Act.

FIFTH CLAIM

DISCHARGE IN EXCESS OF MONTHLY BOD LIMITS

52. Paragraphs 1 through 33 are re-alleged and incorporated by reference as if fully set forth below.

53. The 2009 Permit limits Defendant's discharge of BOD through Outfall No. 002 to the Grand Island POTW to a monthly average of 20,374 lb/day.

54. In November of 2009, and in February and March of 2010, Defendant discharged BOD through Outfall 002 to the Grand Island POTW in an amount that exceeded the 20,374 lb/day monthly average for BOD limitation in violation of the 2009 Permit, Section 301(a) of the CWA and Neb. Rev. Stat. § 81-1508.02(1)(b).

55. Based on these violations, the Defendant is liable for penalties under Section 309(d) of the CWA and Neb. Rev. Stat. § 81-1508.02, as more fully described in paragraph 20. Additionally, Plaintiffs are entitled to injunctive relief, as described in paragraph 19, against the Defendant, restraining further violations of, and requiring compliance with, the 2009 Permit, CWA, and the Nebraska Environmental Protection Act.

SIXTH CLAIM

FAILURE TO REPORT EXCEEDANCES OF PERMIT LIMITATIONS

56. Paragraphs 1 through 33 are re-alleged and incorporated by reference as if fully set forth below.

57. The 2004 and 2009 Permits required Defendant to notify NDEQ by telephone or electronic mail within twenty-four hours of becoming aware of a discharge of pollutants in

excess of certain amounts and concentrations set forth in the Permits and to notify NDEQ in writing within five days of becoming aware of a discharge that exceeds permit limitations.

58. On numerous occasions from 2006 through the present, Defendant failed to report to NDEQ within twenty-four hours discharges of pollutants exceeding the amounts and/or concentrations set forth in the 2004 or 2009 Permits, violating the 2004 and 2009 Permits and Neb. Rev. Stat. § 81-1508.02(1)(b).

59. On numerous occasions from 2006 through the present, Defendant failed to report to NDEQ in writing within five days discharges of pollutants exceeding the amounts and/or concentrations set forth in the 2004 and 2009 Permits, violating the 2004 and 2009 Permit and Neb. Rev. Stat. § 81-1508.02(1)(b).

60. Based on these violations, the Defendant is liable for penalties under Section 309(d) of the CWA and Neb. Rev. Stat. § 81-1508.02, as more fully described in paragraph 20. Additionally, Plaintiffs are entitled to injunctive relief, as described in paragraph 19, against the Defendant, restraining further violations of, and requiring compliance with, the 2009 Permit, CWA, and the Nebraska Environmental Protection Act.

SEVENTH CLAIM

VIOLATIONS OF LIMITS SET FORTH IN NDEQ EMERGENCY ORDER

61. Paragraphs 1 through 33 are re-alleged and incorporated by reference as if fully set forth below.

62. On April 14, 2008, NDEQ issued to Defendant an Emergency Order (“NDEQ Emergency Order”) pursuant to Neb. Rev. Stat. § 81-1507(4), which required Defendant to meet certain effluent limitations on its discharges of pollutants through Outfall 002 to the POTW. These limitations included daily maximum, 7-day average, and monthly average limits for BOD;

daily maximum and 7-day average limits for TSS; and daily maximum and 7-day average limits for oil and grease. Defendant did not contest the NDEQ Emergency Order and it was in effect from April 14, 2008 to May 1, 2009.

63. Between April 14, 2008 and May 1, 2009, Defendant discharged pollutants through Outfall 002 to the POTW in excess of the limitations imposed by NDEQ Emergency Order including:

- (1) nine days in excess of the daily maximum limit for BOD;
- (2) five weeks in excess of the 7 day average limit for BOD;
- (3) three months in violation of the monthly average limit for BOD;
- (4) eighteen days in excess of the daily maximum limit for TSS;
- (5) nine weeks in excess of the 7-day average limit for TSS;
- (6) fifteen days in excess of the daily maximum limit for oil and grease; and
- (7) fifteen weeks in excess of the 7 day average limits for oil and grease.

64. Based on these violations, the Defendant is liable for penalties under Neb. Rev. Stat. § 81-1508.02, as more fully described in paragraph 20.

EIGHTH CLAIM

CONSTRUCTION OF STORAGE BLADDERS WITHOUT A PERMIT

65. Paragraphs 1 through 33 are realleged and incorporated by reference as if fully set forth below.

66. Under Neb. Rev. Stat. §81-1506(2)(b) and Title 123 of the Nebraska Administrative Code, it is unlawful for any person to construct or operate any disposal system or extension or addition thereto without a permit authorizing the project.

67. On or about July 15, 2007, NDEQ was notified of Defendant's fabrication of two storage bladders at their site in Grand Island to store floatable material from their DAF pretreatment facilities.

68. Based on these violations, the Defendant is liable for penalties under Neb. Rev. Stat. §81-1508.02, as more fully described in paragraph 20.

NINTH CLAIM

VIOLATIONS OF NEBRASKA ADMINISTRATIVE CODE TITLE 197 PERTAINING TO CERTIFICATION OF WASTEWATER TREATMENT FACILITY OPERATORS

69. Paragraphs 1 through 33 are realleged and incorporated by reference as if fully set forth below.

70. Title 197 of the Nebraska Administrative Code sets for the requirements governing Certification of Wastewater Treatment Facility Operators in Nebraska. Violation of the requirements set forth in Title 197 is unlawful pursuant to Neb. Rev. Stat. § 81-1508.02(1)(e).

71. On or about October 2006, Defendant violated a number of provisions of Title 197 including: (a) Failure to notify the Department of the hiring and leaving of three DRC operators; (b) Failure to have a legal DRC of the wastewater treatment facility since March 10, 2002; (c) Failure to have all wastewater treatment facility operators certified at Class 2 level; and (d) Using uncertified operators for the operation of a wastewater treatment facility.

72. Based on these violations, the Defendant is liable for penalties under Neb. Rev. Stat. §81-1508.02, as more fully described in paragraph 20.

TENTH CLAIM

CLAIM PURSUANT TO NEB. REV. STAT. § 81-1508(1)
FOR THE COSTS OF FISH RESTOCKING

73. Paragraphs 1 through 33 are re-alleged and incorporated by reference as if fully set forth below.

74. On or about March 28, 2008, the Defendant caused the death of fish while failing to perform its duty as set out in 119 Neb. Admin. Code § 26-002.01.

75. In particular, between March 26 and March 28, 2008, Defendant discharged TSS and BOD through Outfall 002 to the POTW that passed through at the POTW and killed over 10,000 fish along 16.7 miles of the Wood River and 7.5 miles of the Platte River. Defendant's discharge of BOD to the Grand Island POTW on March 27, 2008 was 202,056.72 lbs.

76. Based on these violations, Defendant is liable, pursuant to Neb. Rev. Stat. § 81-1508(1), for the costs incurred by the State to restock the waters of the state with replacement fish in addition to any other penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and State of Nebraska request that the Court:

- a. Order Defendants to comply with the Clean Water Act and the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501–1532 and undertake appropriate action to remedy past violations and prevent future violations.
- b. Assess civil penalties against the Defendants, as permitted by law, for each violation of the Clean Water Act and the Nebraska Environmental Protection Act.

- c. Assess civil penalties against the Defendant pursuant to Neb. Rev. Stat. § 81-1508.02 for each of Defendant's violations of the April 14, 2008 NDEQ Emergency Order.
- d. Award the State of Nebraska \$4,704.59 (four thousand seven hundred and four dollars and fifty-nine cents) for the costs of restocking the waters of the state with replacement fish pursuant to Neb. Rev. Stat. § 81-1508(1);
- e. Award the United States and State of Nebraska the costs and disbursements of this action; and
- f. Grant the United States and State of Nebraska such further relief as the Court may deem just and proper.

The United States of America and the State of Nebraska hereby request that trial of the above and foregoing action should be held in Omaha, Nebraska, and that the case be calendared accordingly.

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