

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

and

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION and PENNSYLVANIA
FISH AND BOAT COMMISSION

Plaintiffs,

v.

JBS Souderton, Inc.

Defendant.

Civil Action No. 08-5999

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CONSENT DECREE

WHEREAS, the Plaintiff, the United States of America (“United States”), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”) has filed the Complaint in this matter alleging that JBS Souderton, Inc. (“JBS”) violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a), and Section 301 of the Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. § 691.1 et seq. (“Clean Streams Law”);

WHEREAS, the Plaintiffs, Pennsylvania Department of Environmental Protection (“PADEP”) and Pennsylvania Fish and Boat Commission (“PFBC”) (PADEP and PFBC collectively, the “Pennsylvania Plaintiffs”), have intervened in this proceeding and filed separate Complaints against JBS (together with the Complaint filed by the United States, collectively, the “Complaints”);

WHEREAS, the PADEP is the agency with the duty and authority to administer and enforce the Clean Streams Law; Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 (“Administrative Code”); and the rules and regulations promulgated thereunder;

WHEREAS, the PFBC is the agency with the duty and authority to enforce the Fish and Boat Code, the Act of October 16, 1980, P.L. 866, No. 175, 30 Pa.C.S.A. § 101 et seq., including, without limitation Section 2506 of this Code, which provides that the PFBC may bring a civil action on behalf of the Commonwealth for the value of any fish killed or any stream or stream bed destroyed or injured by disturbance of waterways or watersheds, littering, pollution, misuse of property and waters, or interference with hatchery or nursery waters;

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WHEREAS, JBS is a Pennsylvania corporation, a wholly owned subsidiary of JBS Packerland, Inc., doing business in the Commonwealth of Pennsylvania with a business address of P.O. Box 64395, Souderton, PA 18964. JBS was formerly known as Smithfield Beef Group - Souderton, Inc., and JBS's parent company, JBS Packerland, Inc. was formerly known as Smithfield Beef Group, Inc. Effective October 23, 2008, Smithfield Foods, Inc. sold its stock in Smithfield Beef Group, Inc. to JBS USA, Inc.;

WHEREAS, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA has authorized PADEP to administer the National Pollutant Discharge Elimination System ("NPDES") in Pennsylvania;

WHEREAS, the PADEP has issued an NPDES permit to JBS authorizing a discharge pursuant to the terms and conditions set forth in NPDES Permit No. PA0035769;

WHEREAS, JBS owns and operates a wastewater treatment plant ("Wastewater Plant") located in Elroy, PA, which discharges to Skippack Creek, a water of the Commonwealth, and waters of the United States, pursuant to NPDES Permit No. PA0035769, and which receives wastewater from JBS's beef processing plant ("Beef Plant") located in Souderton, PA and JBS's rendering plant ("Rendering Plant") located in Elroy, PA;

WHEREAS, prior to October 23, 2008, and for a period of time covered by the Complaint, Smithfield Beef Group – Souderton, Inc., which was owned by Smithfield Beef Group, Inc., owned and operated the Wastewater Plant, the Beef Plant, and the Rendering Plant;

WHEREAS, the Parties have negotiated in good faith and without an admission of liability have reached a settlement of the issues raised in the Complaints;

WHEREAS, the Parties agree, and the Court finds, that settlement of the claims alleged in the Complaints without litigation or trial of any issues is fair, reasonable, and in the public interest

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and that the entry of this Consent Decree is the most appropriate way of resolving the claims alleged in the Complaints;

NOW THEREFORE, before the taking of any testimony, without further adjudication or admission of any issue of fact or law, and upon consent of the Parties, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. DEFINITIONS

1. Unless otherwise defined herein, the terms used in this Consent Decree will have the meaning given to those terms in the following order: (a) as defined by the CWA and the regulations promulgated thereunder; (b) as defined in the Clean Streams Law or the Fish and Boat Code, and the regulations promulgated thereunder; (c) as defined by NPDES Permit No. PA0035769; or (d) as defined by standard engineering practice. Any other words shall be given their ordinary meaning.

The following terms used in this Consent Decree are defined as follows:

- a. "Abandoned" shall mean leaving a pipe in place and making it physically inoperable by at least one of the following methods: sealing, capping, plugging, grouting, and/or filling with flowable fill.
- b. "Date of Entry" shall mean the date on which the Consent Decree is entered by the United States District Court for the Eastern District of Pennsylvania.
- c. "Day" or "days" shall mean a calendar day or calendar days. When the day a report or other deliverable is due under this Consent Decree falls on a Saturday, Sunday or any Federal or Commonwealth legal holiday, JBS shall have until the next calendar day that is not one of the aforementioned days for submittal of such report or other deliverable.
- d. "Parties" shall mean the United States, the Pennsylvania Plaintiffs, and JBS, with each being a "Party."

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e. “ST-1” shall mean the concrete tank located at the site marked “ST-1” in Appendix 1.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

3. Venue is proper in the Eastern District of Pennsylvania pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because JBS conducts business in this District, the subject property is located in this District, and the causes of action alleged herein arose in this District. For purposes of this Consent Decree, or any action to enforce this Consent Decree, JBS consents to the Court’s jurisdiction over this Consent Decree and any such action and over JBS and consents to venue in this judicial district.

4. For purposes of this Consent Decree, JBS agrees that the Complaints state claims upon which relief can be granted pursuant to Sections 301, 309 and 402 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1342.

III. APPLICABILITY

5. The obligations of this Consent Decree apply to and are binding upon the United States and the Pennsylvania Plaintiffs, and upon JBS and any successors, assigns, or other entities or persons otherwise bound by law.

6. No transfer of ownership or operation of the Wastewater Plant, Beef Plant, and Rendering Plant (collectively and hereinafter, the “Facility”), whether in compliance with the procedures of this Paragraph or otherwise, shall relieve JBS of its obligation to ensure that the terms of the Consent Decree are implemented. At least thirty (30) days prior to such transfer, JBS shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously

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provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region III, the United States Attorney for the Eastern District of Pennsylvania, the United States Department of Justice and the Pennsylvania Plaintiffs, in accordance with Section XVI of this Consent Decree (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

7. JBS shall inform officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as any contractor retained to perform work required under this Consent Decree, of its obligations hereunder. JBS shall also make a copy of this Consent Decree available upon request to any interested employee, agent or contractor. JBS shall endeavor to condition its agreements with contractors performing work related to Section V of this Consent Decree upon performance of the work in conformity with the obligations set forth in Sections V and VI of this Consent Decree.

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

IV. PURPOSE

9. The express purposes of the Parties entering into this Consent Decree are (a) to further the objectives of the CWA, the Clean Streams Law, and the Fish and Boat Code; (b) to settle the civil claims of the Plaintiffs for all incidents alleged in the Complaints; and (c) to implement specific actions that will result in JBS's continued compliance with the specific provisions of the statutes and the regulations promulgated thereunder as described in the Complaints.

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10. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing JBS to achieve and maintain full compliance with, and to further the purposes of, the CWA, the Clean Streams Law, and the Fish and Boat Code.

V. REMEDIAL MEASURES

11. The Parties have agreed upon a final design for remedial measures associated with the condenser water piping system, the process drain system, and the stormwater system. JBS shall construct such remedial measures according to the schedule set forth herein. The remedial measures shall include:

a. Condenser Water Piping System: The condenser water system conveys all and only condenser water from a drop pipe at the Rendering Plant to tank ST-1 or the Dissolved Air Flotation (“DAF”) effluent wet well, as illustrated in Appendix 1, at the Wastewater Plant. A replacement condenser water piping system shall be constructed. The system shall include a 6” carrier fiber-reinforced plastic (“FRP”) pipe encased in a secondary 8” or 10” containment FRP pipe. The interstitial space between the two pipes shall be monitored as described in Paragraph 11.d.i. Probes shall be installed, each outfitted with a tee, trap, and a riser, every 150 feet along the approximately 600 feet length of pipe.

i. The design criteria for FRP pipe selection shall include:

- Design flow;
- pH range;
- Maximum temperature;
- Maximum ammonia concentration; and
- Installation conditions, including soil characteristics.

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ii. The condenser water piping system described above shall be illustrated and described in the as-built drawings described in Paragraph 12.g.

b. Process Drain System: A replacement collection and conveyance system for other process wastewater generated at the Rendering Plant to route this wastewater to the Wastewater Plant shall be constructed. This process drain system shall include:

i. A new process header to be installed on three sides of the Rendering Plant to convey process wastewater to the Wastewater Plant. This header shall also receive and convey wastewater from the Tallow Tank Area and from the Grease Filter Room Building, as shown in Appendix 1. The existing grease pit identified in Appendix 1 shall be removed. All other process drain system headers shall be removed from service and either Abandoned or removed. In areas where the existing headers pass below structures, the headers shall be plugged and sealed. Roof leaders from the Rendering Plant shall be connected to the process drain system. The system shall include supplemental pumping for PS2, as identified in Appendix 1, to convey the stormwater collected on the roof of the Rendering Plant. The design criteria for process pipe selection shall include:

- Average process flow;
- Maximum flow (including rainfall);
- pH range;
- Maximum temperature; and
- Maximum ammonia.

ii. The new collection system as described above shall be illustrated and described in the as-built drawings described in Paragraph 12.g.

iii. A process drain system inventory shall be created and shall be updated and maintained as a component of the Environmental Management System, as referenced

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in Paragraph 12. The inventory shall include a pipe numbering system, length, diameter, material, source, destination, service (process served), cleanout location, and final status (including a method of making a pipe physically inoperable) of each pipe. The inventory shall state that it was prepared by a Pennsylvania Licensed Professional Engineer using the appropriate standard of care including one or more of the following steps, without limitation: (a) visual observation; (b) CCTV inspection; (c) dye testing; (d) document review; and (e) interviews. Each record of the inventory shall include the date of original determination of the use of each pipe under this Paragraph and date of any subsequent modification of any individual pipe record.

iv. Each process drain system lateral shall be inspected to determine whether (a) it can be reused, (b) it cannot be reused, or (c) its condition cannot be determined. The evaluation shall be made using the methodology in Appendix 2. This evaluation shall be performed under the supervision of a person certified to perform a National Association of Sewer Service Companies ("NASSCO") assessment and shall be documented in accordance with Paragraph 11.b.v. If a determination is made that the lateral can be reused, it may be reused. If a determination is made that a lateral cannot be reused, it shall be either Abandoned or removed. All laterals for which the condition cannot be determined shall be Abandoned or removed. All new and reused laterals shall be equipped with a cleanout fitting with a tamper resistant cover/cap.

v. Any lateral that, after examination, has been determined to be capable of reuse but its purpose/service cannot be determined may remain in place if rendered inoperable with a locked and tagged valve. If JBS later determines a purpose/service for the lateral, subject to review by a Professional Engineer validating its proposed use, the lock and tag may be removed and the pipe reactivated. All laterals being managed pursuant to this

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subparagraph shall be recorded in accordance with the Environmental Management System as provided in Paragraph 12.

c. Stormwater Enhancements: Portions of the existing stormwater piping shall be Abandoned as illustrated in Appendix 1. The remaining pipe from just upstream of Pump Station 1B (PS1B) to Pump Station 1A (PS1A), as illustrated in Appendix 1, shall be lined with a cured in place pipe (“CIPP”) lining system. Drainage on the south side of Souder Road shall be redirected from the Rendering Plant stormwater system to the tributary located at 40° 16’ 44” N and 75° 20’ 26” W. The drainage shall be redirected utilizing a constructed grass-lined swale. The stormwater system enhancements described above shall be illustrated and described in the as-built drawings described in Paragraph 12.g.

d. Monitoring:

i. Condenser water system: The interstitial space between the carrier and containment pipes shall be monitored through a local leak detection panel and the Supervisory Control and Data Acquisition (“SCADA”) system using leak detection probes described in Paragraph 11.a. Each probe will identify and provide an alarm for any liquid in the interstitial space between the inner and outer pipes (“annulus”). The leak detection panel shall be in-service at all times except for downtime as needed for calibration, maintenance and/or power supply interruption. System downtime shall not exceed five percent (5%). Alarm events shall be recorded in the SCADA system. The records will include the time and location of each event. Responses required for alarm events are described in the Asset Management and Preventive Maintenance Plan as described in Paragraph 12.e.

ii. Process drain system: The Environmental Management System described in Paragraph 12 shall include a plan to periodically monitor the process drain system.

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Monitoring of the process drain system shall assess the following conditions: (1) clogs/physical obstructions and constrictions, (2) cracks, holes, and pipe joint failures, (3) deflections and misalignments, (4) internal corrosion, and (5) leaks, and shall evaluate whether all connections are authorized as identified and described in the record drawings. If the monitoring pursuant to this subparagraph identifies deficiencies related to Conditions 1-5 above, then appropriate corrective action shall be promptly taken. If a connection is identified that is inconsistent with the record drawings, then an investigation shall be performed to determine the source and service of the connection and the record drawings and process drain system inventory shall be updated accordingly. The monitoring plan shall define monitoring technology, monitoring methodology, frequency of monitoring, data to be recorded, and reporting requirements.

iii. Stormwater system: The Environmental Management System described in Paragraph 12 shall include a plan to monitor the stormwater system. This plan shall include the following components: (1) structural analysis using the standards set forth in Paragraph 11.d.ii above, (2) dry weather flow monitoring, (3) wet weather flow monitoring, and (4) procedures for responding to monitoring results, including, where applicable, investigation, notification and corrective action. After the enhancements are complete, Manhole B2 will provide a sampling point for stormwater upstream of the point where stormwater mixes with wastewater.

(a) Dry Weather Flow Monitoring: Dry weather flow monitoring shall be conducted during the first year after complete installation of the enhanced stormwater system and Wastewater Plant (whichever occurs later) using automated devices for the collection of continuous flow detection (presence/absence) and temperature data in Manhole B2, as well as rainfall data obtained in the vicinity of the Rendering Plant. The flow detection device shall allow

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for a *de minimis* threshold, which shall be established following start-up of the enhanced stormwater system. The purpose of this threshold is to screen out nonstormwater flows authorized under NPDES Permit No. PA0035769 (e.g., groundwater). The automated devices shall be calibrated at the frequency recommended by the manufacturer, but not less than quarterly, and at all other times that maintenance is performed on a device. All dry weather flow monitoring data shall be recorded in the SCADA system. This system shall be set to alarm whenever dry weather flow is detected at a rate that exceeds a pre-set depth of flow in the pipe and/or at a temperature that exceeds 90 Degrees Fahrenheit from October through May or 120 Degrees Fahrenheit from June through September in Manhole B2. If the system alarms, then JBS shall implement the procedures for investigation, notification and corrective action, as applicable pursuant to Paragraph 12.a. The results of any such investigation, notification and/or corrective action shall be recorded, pursuant to Paragraph 12.b.

(b) **Wet Weather Flow Monitoring:** Wet weather flow monitoring shall be conducted during the first qualifying event and at least two times per quarter during the first year after complete installation of the enhanced stormwater system and Wastewater Plant (whichever occurs later). Grab samples shall be collected within 30 minutes after stormwater is manually re-directed away from the Wastewater Plant to Skippack Creek. Samples shall be analyzed for temperature, CBOD₅, COD, Nitrate plus Nitrite Nitrogen and Total Suspended Solids as set forth in Table 1 below. All sampling results and triggering events (i.e., manual re-direction after the first flush) shall be recorded. If the average of the 2 monitoring values per quarter for any parameter exceeds the benchmark monitoring concentrations set forth below, then JBS shall implement the procedures for investigation, notification and corrective action, as applicable. The results of any such investigation, notification and/or correction action shall be

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recorded.

Table 1

| | |
|-------------------|-----------|
| CBOD ₅ | 90 mg/l |
| COD | 360 mg/l |
| N+N Nitrogen | 2.04 mg/l |
| TSS | 300 mg/l |

(c) Sampling Waiver: If JBS is unable to collect samples due to adverse climatic conditions, then JBS shall submit to EPA and PADEP, in lieu of sampling data, a description of why samples could not be collected, including available documentation of the event. EPA and PADEP reserve the right to initiate dispute resolution, in accordance with Section XII, in connection with any such submittal.

(d) The Monitoring Plan shall define monitoring technology, frequency of monitoring, data to be recorded, training requirements and reporting requirements and shall be at least as detailed as specified by NPDES Permit No. PA0035769.

e. Schedule: The general design and construction milestones shall be in accordance with the following schedule:

| <u>Event</u> | <u>Date</u> |
|--|---|
| 1. Submit conceptual design plans for collection and conveyance system upgrades to PADEP for review | Completed |
| 2. Submit final design plans for collection and conveyance system upgrades to EPA and PADEP for review | Completed |
| 3. Complete construction of collection and conveyance system upgrades | June 18, 2010, provided that there are no material changes to the design plans between the date of lodging and the Date of Entry. |

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12. Environmental Management System: Within sixty (60) days of the Date of Entry, JBS shall develop a new or revised Environmental Management System (“EMS”). The EMS shall be for the purpose of promoting regulatory compliance with the CWA and the Clean Streams Law. The EMS shall be submitted to EPA and PADEP for review and approval. The EMS and each of its documents shall be controlled by date, revision number, and author. The EMS shall include the components described below.

a. A procedure for root cause analysis. The procedure for root cause analysis shall include definitions of precipitating events, analysis procedures, an emergency response plan that describes how key processes will be repaired or replaced in the event of a failure, and reporting that will identify instances of non-compliance or nonconformance, the known or suspected cause of such non-compliance or nonconformance, corrective and preventive actions, and the schedule for such actions.

b. An environmental recordkeeping procedure for the maintenance of wastewater and stormwater records. At a minimum, the following records shall be retained and will be available for inspection by EPA, PADEP, and PFBC.

- i. Records of the monitoring of the interstitial space of the condenser water pipe;
- ii. Periodic monitoring records of the process drain system;
- iii. Records of locked and tagged valves for reusable pipe;
- iv. Monitoring records of the stormwater system;
- v. Training records pursuant to this Consent Decree;
- vi. Electronic records from SCADA as related to conveyance system, which records may be stored outside of SCADA itself;

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- vii. Record drawings;
 - viii. An organization chart, by job title, of personnel with environmental roles and responsibilities that defines roles and responsibilities;
 - ix. Reporting of root cause analysis;
 - x. Records of maintenance under the Asset Management and Preventive Maintenance Plan as defined in Paragraph 12.e;
 - xi. Records of calibration under Paragraph 11.d.i. and iii;
 - xii. Records of corrective action taken in accordance with Paragraph 11.d.ii; and
 - xiii. Signed contractor Trade Sheets, as defined in Paragraph 12.d.i.
- c. A procedure for wastewater and stormwater training. The training program shall include: (1) job-specific training for Wastewater Plant and Rendering Plant employees; (2) training for employees who primarily and directly assist in the supervision of Wastewater Plant operations; and (3) annual refresher training for both groups. Training under this program may be provided live or through electronic media.
- i. Employee Training: No later than one hundred (100) days after the Date of Entry, all Wastewater and Rendering Plant employees shall complete the Stormwater-Wastewater Employee Training program. The syllabus for this program is set forth in Appendix 3. Training that meets the requirements of this Consent Decree may be completed prior to the Date of Entry. If an employee completes this training program prior to the Date of Entry, the employee's annual training refresher date will be one year from the Date of Entry. Those employees who complete their training after the Date of Entry will be required to obtain refresher training within one year of their actual training completion date.

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ii. Supervisor Environmental Training: No later than one hundred (100) days after the Date of Entry, all employees who primarily and directly assist in the supervision of the Wastewater Plant shall complete the Supervisor Environmental Training program. The syllabus for this program is set forth in Appendix 3. Training that meets the requirements of this Consent Decree may be completed prior to the Date of Entry. If an employee completes this training program prior to the Date of Entry, the employee's annual training refresher date will be one year from the Date of Entry. Those employees who complete their training after the Date of Entry will be required to obtain refresher training within one year of their actual training completion date.

iii. Annual Refresher Training: Refresher training shall be provided for those who previously completed training under subparagraphs c.i and c.ii above. The refresher training shall be valid for up to twelve (12) months.

iv. JBS shall annually evaluate the scope and effectiveness of the training programs in subparagraphs c.i)-c.iii above to determine whether any changes are necessary.

d. A procedure for contractor compliance. No later than sixty (60) days after the Date of Entry, written requests for bids from Listed Contractors, as set forth in Appendix 4, for work at the Wastewater Plant or the Rendering Plant shall include notice that any successful bidder must comply with all applicable local, state and federal environmental laws, rules, regulations and permit conditions.

i. Not later than sixty (60) days after the Date of Entry or prior to a Listed Contractor beginning work, whichever is later, each Listed Contractor shall be provided either by posting on an internet site or by otherwise delivering to each Listed Contractor the

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applicable “Trade Sheet” attached at Appendix 5, which shall be signed by the Listed Contractor and maintained by JBS in accordance with Paragraph 12.b.xiii.

ii. Contracts entered into with Listed Contractors shall: (1) require compliance with all applicable local, state, federal environmental laws, rules, regulations and permit conditions; (2) require the contractor to provide the “Trade Sheet” to their employees who will be working onsite and provide appropriate training to their own employees on environmental requirements; and (3) describe the consequences for failure to comply with the applicable local, state, federal environmental laws, rules, regulations and permit conditions.

e. An Asset Management and Preventive Maintenance Plan (“AMPMP”) for the stormwater, process drain water, and condenser water collection and conveyance systems, and the Wastewater Plant. The AMPMP shall consist of the following components:

- Inventories of the stormwater, process drain water, and condenser water collection and conveyance systems assets, and the Wastewater Plant assets (“Assets”);
- A database that includes schedules for the maintenance of the Assets;
- Records of the maintenance conducted on the Assets; and
- An operation and maintenance manual for the Assets, which shall, at a minimum, address the requirements set forth in NPDES Permit No. PA0035769 as of the date of this Consent Decree.

f. An Supervisory Control and Data Acquisition (“SCADA”) system for the Assets within ten (10) days after completion of construction of the collection and conveyance system upgrades. At a minimum, the SCADA shall monitor the following categories: equipment status, alarm conditions, fluid levels, leak detection from the condenser water pipe’s interstitial

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space, pH probes, DO probes, blower status, pump status (on/off), basin/tank level, flow meters, flow detector at Manhole B2, and other treatment equipment such as tertiary filters and UV disinfection.

g. As-built drawings of the stormwater, process drain water, and condenser water collection and conveyance systems within thirty (30) days after completion of construction of the collection and conveyance system upgrades. If a field modification is made, the date and description of the modification shall be updated in the inventories identifying the drawings, the revised drawing shall be saved, and the replaced drawing shall be archived.

13. The Parties understand and agree that the materials to be developed pursuant to Paragraph 12 may be enhanced, supplemented, and changed over the life of this Consent Decree to meet changing conditions at the Facility. Any such enhancements, supplements and changes shall not be deemed modifications under Section XVII but may be disapproved pursuant to Section VII.

VI. REPORTING REQUIREMENTS

14. Beginning with the one year anniversary of the Date of Entry, JBS shall submit to EPA and PADEP within thirty (30) days after each six month period until termination of this Consent Decree a Semi-annual Report, which shall contain the following:

- a. Progress report on the implementation of each of the requirements of Paragraphs 11 and 12 and description of any enhancements, supplements and changes under Paragraph 13;
- b. Description of any problems and/or delays anticipated with respect to meeting the requirements of Paragraphs 11 and 12;
- c. A Gant Chart to illustrate the overall project schedule;

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d. Any such additional matters as JBS believes should be brought to the attention of EPA and PADEP;

e. Each progress report, where appropriate, shall contain the certification of any work completed in compliance with this Consent Decree in that period.

15. Any reporting requirements listed in NPDES Permit No. PA0035769 and PADEP's rules and regulations implementing the Clean Streams Law that are not specifically listed in this Consent Decree must be reported to EPA for the life of this Consent Decree.

16. In all documents submitted to EPA and PADEP pursuant to this Consent Decree, JBS shall, by signature of a senior management official of JBS, certify such notices as follows:

"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 such 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."

VII. REVIEW AND APPROVAL OF SUBMITTALS

17. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree, EPA and PADEP shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and

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disapprove the remainder; or (d) disapprove the submission. The basis for any disapproval shall be provided therewith.

18. If the submission is approved pursuant to Paragraph 17, JBS shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 17, JBS shall, upon written direction from EPA, after consultation with PADEP, take all actions required by the approved plan, report, or other item that EPA, after consultation with PADEP, determines are technically severable from any disapproved portions, subject to JBS's right to dispute only the specified conditions or the disapproved portions, under Section XII of this Consent Decree (Dispute Resolution).

19. If the submission is disapproved in whole or in part pursuant to Paragraph 17, JBS shall, within forty-five (45) days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, JBS shall proceed in accordance with the preceding Paragraph.

20. Any stipulated penalties applicable to the original submission, as provided in Section X of this Consent Decree, shall accrue during the forty-five (45) day period or other specified period, but shall not be payable unless the resubmission is not submitted within the 45 day or timeframe otherwise agreed to by the Parties in writing or is disapproved in whole or in part.

21. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA and PADEP, may again require JBS to correct any deficiencies, in

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accordance with the preceding Paragraphs, subject to JBS's right to invoke Dispute Resolution and the right of EPA and PADEP to seek stipulated penalties as provided in the preceding Paragraphs.

22. Where any compliance obligation under this Section requires JBS to obtain a federal, state, or local permit or approval or other third party approval, JBS shall submit timely and complete applications and take actions reasonably necessary to obtain all such permits or approvals. JBS may seek relief under the provisions of Section XI of this Consent Decree (Force Majeure) 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 JBS has submitted timely and complete applications and has taken actions necessary to obtain such permits or approvals.

VIII. RIGHT OF ENTRY

23. EPA and PADEP, and their authorized representatives, shall each have authority, at all reasonable times, and upon the presentation of credentials, to enter the Facility to:

- a. Monitor the activities required by this Consent Decree;
- b. Verify any data or information submitted to EPA or PADEP;
- c. Obtain samples to verify compliance with the Consent Decree;
- d. Inspect and evaluate the Facility to verify JBS's implementation of, and compliance with, the terms of this Consent Decree; or
- e. Review and copy non-privileged records and information required to be maintained under the terms and conditions of the Consent Decree.

24. During the records retention period specified in Section XIV, EPA and PADEP may inspect and review any records required to be kept under the terms and conditions of this

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Consent Decree and the CWA, and JBS shall produce such records for inspection by EPA and PADEP at a reasonable time.

25. These inspection rights are in addition to, and in no way limit or otherwise affect, the statutory authorities of EPA or PADEP to conduct inspections, to require monitoring, and to obtain information from JBS as authorized by law.

IX. CIVIL PENALTY

26. JBS shall pay a total amount of \$ 1,900,000 to the United States and PADEP to resolve the violations alleged in the Complaints. JBS shall pay a civil penalty of \$950,000 to the United States within thirty (30) days following the Date of Entry; a civil penalty of \$950,000 to PADEP within thirty (30) days following the Date of Entry. JBS shall also pay civil damages of \$100,000 to PFBC, out of which \$10,000 is designated for reimbursement of investigative costs, within thirty (30) days following the Date of Entry. Such payments shall be made in accordance with the procedures described in Paragraphs 27, 28, and 29, below.

27. Payment of civil penalty to the United States shall be made by Electronic Funds Transfer to the U.S. Department of Justice. Payment shall be made in accordance with instructions provided by the United States Attorney's Office for the Eastern District of Pennsylvania to JBS following the Date of Lodging but prior to the Date of Entry. Notice of the Electronic Funds Transfer shall be e-mailed to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

The transmittal letter forwarding such notice shall include the caption, civil action number, and judicial district of the this action.

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28. Payment of civil penalty to PADEP shall be made by corporate check made payable to “Commonwealth of Pennsylvania, Department of Environmental Protection, Clean Water Fund” and sent to Regional Water Quality Manager, Department of Environmental Protection, Southeast Regional Office, 2 East Main Street, Norristown, PA 19401.

29. Payment of civil damages to PFBC shall be made by corporate check payable to “Pennsylvania Fish and Boat Commission” and sent to Jason Oyler, Assistant Counsel, P.O. Box 67000, Harrisburg, PA 17106-7000.

30. If JBS fails to tender all or any portion of the payment owed to the United States, PADEP, and/or PFBC within thirty (30) days of the Date of Entry, interest on the unpaid amount shall accrue in accordance with the provisions of 28 U.S.C. § 1961 from the date of lodging, and be paid from the date said payment is due until all amounts owed are paid.

31. JBS shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal income tax.

X. STIPULATED PENALTIES

32. JBS shall be liable for stipulated penalties to the United States and PADEP for violations of this Consent Decree as set forth below, unless excused under Section XI (Force Majeure). A violation includes failing to perform any obligation required by 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.

a. For delays in performance of the obligations set forth in Paragraph 11 above, \$2,000 per day for Day 1 up to and including Day 30, and \$3,000 per day for Day 31 and beyond.

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b. For delays in performance of the obligations set forth in Paragraph 12 above, \$1,000 per day for Day 1 up to and including Day 30, and \$2,000 per day for Day 31 and beyond.

c. For delays in performance of the obligations set forth in Paragraphs 14 or 26 above, \$1,000 per day.

33. 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 completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

34. JBS shall pay any stipulated penalty within thirty (30) days of receiving a written demand by any Plaintiff. JBS shall pay 50% of the total stipulated penalty amount due to the United States and 50% to the PADEP. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiffs.

35. Any Plaintiff may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

36. Stipulated penalties shall continue to accrue as provided in Paragraph 53, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of Plaintiffs that is not appealed to the Court, JBS shall pay accrued penalties determined to be owing, together with interest, to the Plaintiffs within thirty (30) days of the effective date of the agreement or the receipt of the Plaintiffs' decision or order.

b. If the dispute is appealed to the Court and the Plaintiffs prevail in whole or in part, JBS shall pay all accrued penalties determined by the Court to be owing, together with

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interest, within sixty (60) days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the lower court's decision, JBS shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) days of receiving the final appellate court decision.

37. JBS shall pay stipulated penalties owing to the Plaintiffs in the manner set forth and with the confirmation notices required by Paragraph 66, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

38. If JBS fails to pay stipulated penalties according to the terms of this Consent Decree, JBS shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit any Plaintiff from seeking any remedy otherwise provided by law for JBS's failure to pay any stipulated penalties.

39. Subject to the provisions of Section XV 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 for JBS's violation of this Consent Decree or applicable law.

XI. FORCE MAJEURE

40. "Force Majeure," for the purposes of this Consent Decree, is defined as an event arising from causes beyond the control of JBS, or any entity controlled by JBS, or of JBS's contractors, which delays or prevents the performance of any obligation under this Consent Decree. "Force Majeure" does not include JBS's financial inability to perform any obligation under this Consent Decree.

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41. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, JBS shall provide notice orally or by electronic or facsimile transmission to Plaintiffs, within seventy-two (72) hours of when JBS first knew that the event might cause a delay. Within seven (7) days thereafter, JBS shall provide in writing to Plaintiffs an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or anticipated to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; JBS's rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of JBS, such event may cause or contribute to an endangerment to public health, welfare or the environment. JBS shall include with any 7-day notice available documentation supporting the claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude JBS from asserting any claim of Force Majeure for that event for the period of time such failure to comply, and for any additional delay caused by such failure. JBS shall be deemed to know of any circumstance of which JBS knew or should have known, as well as any circumstance of which any entity controlled by JBS or JBS' contractor knew or should have known.

42. If the United States and the Pennsylvania Plaintiffs agree that the delay or anticipated delay is attributable to a Force Majeure event, 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 and the Pennsylvania Plaintiffs for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other

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obligation. The United States and the Pennsylvania Plaintiffs will jointly notify JBS in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

43. If the United States or the Pennsylvania Plaintiffs do not notify JBS of their decision within 90 days of JBS' full and complete notice, then any penalties that would otherwise accrue pursuant to Section X (Stipulated Penalties) will be excused for the period beginning on the 91st day following JBS' notice until notification of the decision by the United States or the Pennsylvania Plaintiffs.

44. If JBS elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of the Plaintiffs' notice. In any such proceeding, JBS 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 and that the duration of the delay or the extension sought was or will be warranted under the circumstances. If JBS carries this burden, the delay at issue shall be deemed not to be a violation by JBS of the affected obligation of this Consent Decree identified by Plaintiffs and the Court.

XII. DISPUTE RESOLUTION

45. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between and among the Parties arising under or with respect to this Consent Decree. The procedures set forth in this Section, however, shall not apply to actions by the United States or the Pennsylvania Plaintiffs to enforce obligations of JBS that have not been disputed in accordance with this Section.

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46. 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 JBS sends the United States and the Pennsylvania Plaintiffs a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) days from the date of the Notice of Dispute, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position jointly advanced by the United States and Pennsylvania Plaintiffs shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, JBS invokes formal dispute resolution procedures as set forth below.

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

48. The United States and the Pennsylvania Plaintiffs shall serve their Statement of Position within forty-five (45) days of receipt of JBS's Statement of Position. The United States and the Pennsylvania Plaintiffs' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States and the Pennsylvania Plaintiffs. The United States and the Pennsylvania Plaintiffs' Statement of Position shall be binding on JBS, unless JBS files a motion for judicial review of the dispute in accordance with the following Paragraph.

49. JBS may seek judicial review of the dispute by filing with the Court and serving on the United States and the Pennsylvania Plaintiffs, in accordance with Section XVI of

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this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within the time period allowed by the Local Rules of this Court after receipt of the United States and the Pennsylvania Plaintiffs' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of JBS's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set for the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

51. Except as otherwise provided in this Consent Decree, in any dispute brought under this Section XII pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA and PADEP under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes, JBS shall have the burden of proof in accordance with applicable law.

52. Except as otherwise provided in this Consent Decree, in any other dispute brought under Section XII, JBS shall also bear the burden of demonstrating that its position complies with the objectives of the Consent Decree.

53. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of JBS under this Consent Decree, unless and until final resolution of the dispute so provides. Except as set forth in Paragraph 43, stipulated penalties with respect to the disputed matter shall continue to accrue from the first day

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of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 36. If JBS does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. COSTS OF SUIT

54. Each Party to this Consent Decree shall bear its own costs and attorneys' fees with respect to matters resolved by this Consent Decree, except that the United States and the Pennsylvania Plaintiffs shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid under this Consent Decree.

XIV. RECORDKEEPING

55. Subject to Paragraphs 57 and 58, JBS shall preserve and retain records and information now in its possession, custody, or control, or that comes into its possession, custody, or control, that are required to be created under this Consent Decree or primary records that relate to JBS's performance of the Remedial Measures set forth in Section V, regardless of any records retention policy to the contrary, for a period of three (3) years after the date of the termination of this Consent Decree. For purposes of this Paragraph 55, primary records shall not include (a) telephone messages of an exclusively personal nature, or (b) electronic mail messages of an exclusively personal nature.

56. Subject to Paragraphs 57 and 58, at the conclusion of the records retention period specified in Paragraph 55, JBS shall notify the United States at least sixty (60) days prior to the destruction of any such records or information, and, upon request by the United States, JBS shall deliver any such records or information to EPA. If the United States does not request delivery of such records or information within the 60 day period, then the records or information may be destroyed, provided that such destruction is not prohibited by applicable law.

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57. JBS has the right to assert that certain records or information are privileged under the attorney-client privilege or any other privilege recognized by federal law, and nothing set forth herein shall be construed as a waiver of such privilege or claim. The Plaintiffs reserve the right to challenge any such assertion in federal court. If JBS asserts a privilege over any documents requested by Plaintiffs, JBS shall provide a privilege log to Plaintiffs no later than thirty (30) days after the request for documents by Plaintiffs. For each such document withheld on the ground of privilege, the privilege log shall identify the author, recipient(s) (if any), what privilege(s) apply, and a description sufficient to identify the basis of the privilege.

58. Records and information submitted by JBS pursuant to this Consent Decree shall be subject to public disclosure based on requests under applicable law providing for such disclosure unless (a) the records and information are subject to legal privileges or protection or (b) JBS claims in accordance with 40 C.F.R. Part 2 that the records and information contain confidential business information.

XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

59. This Consent Decree resolves the specific civil claims and violations alleged against JBS in the Complaints filed by the Plaintiffs through the Date of Lodging. For purposes of this Paragraph 59, JBS includes JBS Souderton, Inc., JBS Packerland, Inc., Smithfield Beef Group – Souderton, Inc., and Smithfield Beef Group, Inc. This Consent Decree does not resolve criminal liability, if any, that any person might have for violations of the Clean Water Act and Pennsylvania laws. The Plaintiffs reserve all remedies available to them for violations of the Clean Water Act and Pennsylvania laws by JBS which are not alleged in the Complaints and for violations of the Clean Water Act, Pennsylvania laws and/or other similar statutes by JBS which occur after the Date of Lodging.

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60. The United States and the Pennsylvania Plaintiffs reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law. If, however, the United States or the Pennsylvania Plaintiffs elect to seek both stipulated penalties and civil or administrative penalties from JBS for the same violation, any recovery of stipulated penalties would be offset by the amount awarded to the United States or the Pennsylvania Plaintiffs in civil or administrative penalties, or vice versa. This Consent Decree shall not be construed to limit the rights of the Plaintiffs to obtain penalties or injunctive relief under the Clean Water Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 59. The United States further reserves 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, JBS, whether related to the violations addressed in this Consent Decree or otherwise. Nothing in this Consent Decree shall be construed to limit the authority of the Commonwealth to undertake any action against any person, including JBS under Pennsylvania law relating to abatement of or prevention of pollution.

61. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for injunctive relief, civil penalties, or other appropriate relief relating to violations by JBS, JBS shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 59. Nothing in this Consent Decree shall constitute an admission of fact or law by any party and JBS does not admit any liability in

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connection with this Consent Decree, the Complaints or the facts and circumstances alleged therein.

62. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local law or regulation. JBS is responsible for achieving and maintaining compliance with all applicable federal, state, and local laws, regulations, and permits; and JBS's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Plaintiffs do not, by their consent to the entry of the Consent Decree, warrant or aver in any manner that JBS's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, or with any other provisions of federal, state or local laws, regulations or permits.

63. This Consent Decree does not limit or affect the rights of JBS or of the Plaintiffs 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 JBS, except as otherwise provided by law.

64. Except as set forth in Paragraph 59, 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.

65. On November 21, 2008, PADEP issued to JBS an administrative order under the Clean Streams Law ("the Order"). The Order required JBS to submit to the Department a design for upgrade of the rendering plant collection system. It also required JBS to implement the design in accordance with a specific timetable. JBS appealed the Order to the Pennsylvania Environmental Hearing Board ("EHB") at Docket No. 2008 - 345 - K ("the EHB appeal"). It was and is the intention of PADEP for the upgrade of the rendering plant collection system under the Order to be consistent with the design and construction goals of this Consent

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Decree. As a result, on the Date of Entry, the Order shall be deemed fully resolved and complete, and the EHB appeal shall be withdrawn.

XVI. FORM OF NOTICE

66. Unless otherwise specified, all reports, notices, or any other written communications required to be submitted under this Consent Decree shall be made to the respective Parties at the following addresses:

a. To EPA:

Yvette Roundtree (3RC20)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Director (3WP00)
Water Protection Division
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

b. To the U.S. Department of Justice:

Chief, Civil Division
United States Attorney's Office for the Eastern District of
Pennsylvania
615 Chestnut Street
Suite 1250
Philadelphia, PA 16106

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(Notices to the Chief, Environmental Enforcement Section are limited to those required pursuant to Section XII Dispute Resolution and Section XVII Modification.)

c. To PADEP:

Regional Water Quality Manager
Department of Environmental Protection

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2 East Main Street
Norristown, PA 19401
484-250-5970 Fax: 484-250-5971

d. To PFBC:

Jason Oyler, Esq.
Office of Chief Counsel
Pennsylvania Fish & Boat Commission
P.O. Box 67000
Harrisburg, PA 17106-7000

e. To JBS:

Mr. James Fisher
General Manager
JBS Souderton, Inc.
249 Allentown Road
Souderton, PA 18964-0395
215-723-5555 Fax: 215-723-2190

With a copy to:

Steven P. Case
McGrath North Mullin & Kratz, PC LLO
First National Tower, Suite 3700
1601 Dodge Street
Omaha, Nebraska 68102
402-341-3070 Fax: 402-952-1879

JBS shall notify the United States and the Pennsylvania Plaintiffs whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Decree, including its enforcement, may be made by mailing a copy by first class mail to the above addresses.

XVII. MODIFICATION

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

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68. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XII of this Consent Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 51, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule Civil Procedure 60(b).

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

69. The Parties acknowledge that after the lodging and before the Date of Entry, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. JBS agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States or the Pennsylvania Plaintiffs has notified JBS in writing that it no longer supports entry of the Consent Decree.

XIX. RETENTION OF JURISDICTION

70. This Court shall retain jurisdiction over this matter to enforce or modify the Consent Decree or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any Party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XX. SIGNATORIES

71. The Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, the undersigned representatives of the Pennsylvania Plaintiffs, and the undersigned representatives of JBS certify that they are fully authorized to enter

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into the terms and conditions of this Consent Decree and to execute and legally bind to this document the Party on behalf of whom they are signing.

XXI. TERMINATION

72. Upon ninety (90) days advance notice to the Plaintiffs, JBS shall be entitled to make a unilateral motion to the Court to terminate this Consent Decree at any time after all of the following have occurred: (a) JBS has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree; (b) JBS has certified completion of Sections V and VI, (c) JBS has certified compliance with all other requirements of this Consent Decree; and (d) provided, however, that no violation of NPDES Permit No. PA0035769, and no unauthorized spill or release from the Facility to Skippack Creek or other waters of the United States has occurred within the six (6) month period preceding JBS's motion.

73. If Plaintiffs do not agree that JBS has satisfied the conditions for termination set forth in Paragraph 72, then Plaintiffs may file an objection with the Court within thirty (30) days after service of JBS's motion. This Consent Decree shall remain in effect pending resolution of the objection by the Parties or the Court.

XXII. FINAL JUDGMENT

74. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the Pennsylvania Plaintiffs, and JBS.

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IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2010.

United States District Judge

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FOR THE UNITED STATES:

_____ Dated: _____
IGNACIA S. MORENO Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

_____ Dated: _____
NANCY A. FLICKINGER Senior Attorney
Environment and Natural Resources Division
U.S. Department of Justice

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_____ Dated: _____
MICHAEL L. LEVY
United States Attorney
U.S. Attorney's Office for the Eastern District of Pennsylvania

_____ Dated: _____
MARGARET L. HUTCHINSON
Chief, Civil Division
U.S. Attorney's Office for the Eastern District of Pennsylvania

_____ Dated: _____
MICHAEL BLUME
Assistant U.S. Attorney, Civil Division
U.S. Attorney's Office for the Eastern District of Pennsylvania

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FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Dated: _____

CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

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SHAWN M. GARVIN
Regional Administrator
U.S. Environmental Protection Agency, Region III

Dated: _____

MARCIA E. MULKEY
Regional Counsel
U.S. Environmental Protection Agency, Region III

Dated: _____

YVETTE C. ROUNDTREE
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III

Dated: _____

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FOR THE PENNSYLVANIA PLAINTIFFS:

_____ Dated: _____
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