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 U.S. DISTRICT COURT  
 WEST DIST. OF WISCONSIN  
 MAY 25 2000  
 FILED  
 JOSEPH W. SKUPNIEWITZ, CLERK  
 CASE NUMBER

IN THE UNITED STATES DISTRICT COURT  
 FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case Number 00-C-0166-C
	)	
REDI-SERVE FOODS	)	
LIMITED PARTNERSHIP,	)	
	)	
Defendant.	)	

~~PROPOSED~~ ORDER FOR ENTRY OF CONSENT DECREE

IT IS HEREBY ORDERED THAT the Consent Decree signed by Plaintiff United States of America and Defendant Redi-Serve Foods Limited Partnership and lodged with this Court on March 24, 2000, is ENTERED AS AN ORDER OF THIS COURT.

Dated this 25<sup>th</sup> day of May, 2000.

BY THE COURT:

Barbara B. Crabb  
 BARBARA B. CRABB  
 United States District Judge  
 Western District of Wisconsin

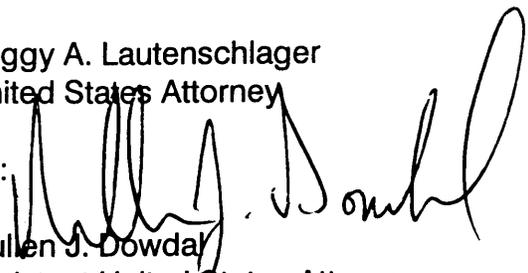
Copy of this document has been provided to: AUSA Dowdal  
 + Attorney Bennett  
 this 25 day of May 2000  
 By J. Hahn  
 Deputy Clerk

A TRUE COPY, Certified MAY 30 2000  
 \_\_\_\_\_  
 Joseph W. Skupniewitz, Clerk  
 U. S. District Court  
 Western District of Wisconsin  
 By J. Hahn  
 Deputy Clerk

PRESENTED BY:

Peggy A. Lautenschlager  
United States Attorney

By:



Mullen J. Dowday  
Assistant United States Attorney  
P.O. Box 185  
Madison, Wisconsin 53701-1585  
(608) 264-5158

OF COUNSEL:

Andre Daugavietis  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

8  
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UNITED STATES OF AMERICA,  
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000 0166 C

Case No.

Copy of this document has been  
 provided to: AUSA Dowdal  
& Atty Pigott  
 this 30 day of May, 2000  
 By J. Fisher  
 Deputy Clerk

CONSENT DECREE

Plaintiff, the United States of America, by authority of the Attorney General of the United States, and acting at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), has filed a Complaint in this action seeking civil penalties and injunctive relief pursuant to Section 113 of the Clean Air Act (the "Act"), 42 U.S.C. § 7413, against the Defendant, Redi-Serve Foods Limited Partnership ("Redi-Serve").

A TRUE COPY,  
 Certified  
 MAY 30 2000  
 Joseph W. Skupniewitz, Clerk  
 U. S. District Court  
 Western District of Wisconsin  
 By J. Fisher  
 Deputy Clerk

The Complaint alleges that Redi-Serve violated Section 113(b) of the Act, 42 U.S.C. § 7413(b) by failing to comply with applicable regulations in the federally-approved Wisconsin State Implementation Plan ("SIP"). Specifically, the Complaint alleges that Redi-Serve, which operates a meat processing facility at 1200 Industrial Drive in Fort Atkinson, Wisconsin violated the maximum allowable emissions of particulate matter from Broiler 1 at its Fort Atkinson facility in violation of Wisconsin Administrative Code and NR 415.05(2) from July 7, 1994 through February 6, 1996.

The United States and Redi-Serve agree that settlement of this action is in the public interest and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter.

THEREFORE, upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

#### I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

2. This Court has personal jurisdiction over Redi-Serve and venue is proper in the Western District of Wisconsin under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and under 28 U.S.C. § 1381(b) and (c).

3. The parties agree to be bound by the terms of this Consent Decree and not to contest its validity in any subsequent proceeding.

4. Without an admission of liability for the claims asserted by the United States, Redi-Serve waives all objections and defenses that it may have to the Court's jurisdiction or to venue in this District and shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

#### II. DEFINITIONS

5. Unless specifically defined in this section or elsewhere in this Consent Decree, terms used herein shall have the meaning set forth in Section 302 of the Clean Air Act, 42 U.S.C. § 7602, or any regulations promulgated under the Act.

6. "Act" means the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*
7. "U.S. EPA" means the United States Environmental Protection Agency.
9. "Facility" shall mean the meat processing facility located at 1200 Industrial Drive in Fort Atkinson, Wisconsin, currently owned and operated by Redi-Serve.
10. "Notify," "submit," and other terms signifying an obligation to transmit or communicate documents and information means to deliver by personal delivery, by courier, or by mail for delivery not later than the day that such transmission or communication is required by this Consent Decree.
11. "Parties" means the United States and Redi-Serve.
12. "Redi-Serve" or "Defendant" shall mean Redi-Serve Foods Limited Partnership.
13. "WDNR" means the Wisconsin Department of Natural Resources.

### III. PARTIES BOUND

14. The provisions of this Consent Decree shall apply to and be binding on the United States and Redi-Serve, and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter Redi-Serve's status or responsibilities under this Consent Decree. Redi-Serve shall be responsible for ensuring that its officers, directors, agents, servants, contractors, subcontractors, employees and lessees comply with the requirements of this Consent Decree. In the event of any change in ownership, operation, or corporate, or other legal status, at least thirty days before transferring such ownership or operation of any part of the Facility,

Defendant shall verify to the United States in writing, that the change will occur. No such sale or transfer shall relieve Defendant of the obligations in this Decree unless agreed to in writing by the United States and approved by the Court.

#### IV. CIVIL PENALTIES

15. Defendant shall pay a civil penalty of \$195,000 to the United States of America within thirty days of the effective date of this Consent Decree. The payment of these civil penalties shall be in full satisfaction and settlement of all civil claims for violations alleged in the Complaint relating to the Redi-Serve Facility and occurring before the date of lodging of the Consent Decree.

16. Civil penalty payments pursuant to this Consent Decree are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f) or of 28 C.F.R. § 1.162-21, and are not tax deductible expenditures for purposes of federal law.

17. All payments shall be made payable to "Treasurer, United States of America", bearing a notation as to the civil docket number of this action, and sent to:

PEGGY A. LAUTENSCHLAGER  
United States Attorney  
Western District of Wisconsin  
Suite 200  
660 W. Washington Avenue  
P.O. Box 1585  
Madison, Wisconsin 53701-1585

Simultaneously with the making of any such payment, the Defendant shall submit copies of the check and the payment transmittal letter, identifying this Decree and this Paragraph, to the below addresses:

Attn: Decree Tracker  
Air Enforcement Branch (AE-17J)  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590

United States Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
Attn: DOJ # 90-5-2-1-2188

#### V. FAILURE TO MAKE TIMELY PAYMENTS

18. If the civil penalty provided for in this Consent Decree is not timely paid, this Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection of any unpaid amounts in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308, and other applicable federal authority. The United States shall be entitled to interest on any overdue amount from the due date at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. Further, Redi-Serve shall be liable for reasonable attorneys fees and costs incurred by the United States to collect any amounts past due under this Consent Decree.

#### VI. COMPLIANCE ORDER

##### COMPLIANCE WITH THE ACT

19. Redi-Serve and its agents, servants, employees, heirs, successors and assigns shall comply with the Act and its implementing regulations. Further, this

Consent Decree in no way affects or relieves Redi-Serve of its responsibility to comply with any otherwise applicable federal, state or local law, regulation or permit.

SIP AND PERMIT COMPLIANCE

20. Redi-Serve shall comply with the emission limit in Wisconsin Rule NR 415.05(2).

21. Redi-Serve shall comply with the terms of its Wisconsin permits, and any future modifications thereof.

22. Redi-Serve shall copy U.S. EPA on all air emission compliance reports it makes to WDNR, including any temperature excursions (of minus 25 degrees Fahrenheit from the last stack test), malfunctions and down times of the catalytic oxidizer.

23. Within three months of the entry of this Consent Decree, Redi-Serve agrees to train or retain a certified opacity observer and shall perform one daily visual stack inspection and make observations of the emissions. These visual stack inspections may be sixty seconds or longer in duration.

24. If during the daily visual stack inspection observations emission opacity appears to be greater than 20% on any day, then Redi-Serve shall make subsequent periodic visible emissions readings (VE readings) on two consecutive days within 7 days of the first 20% observation, and at least once monthly for the following 2 months. The VE readings should be taken for at least 30 minutes using U.S. EPA Method 9 and shall be recorded. Redi-Serve shall submit to U.S. EPA a report of any VE exceedance. Copies of the records shall be provided to U.S. EPA by the end of the month following

the period to which the readings apply. The VE readings may be discontinued after 2 consecutive months in which no opacity of over 20% is observed; but subsequent observations of greater than 20% opacity shall trigger additional periodic VE reading requirements as set forth above.

25. If Redi-Serve changes the Facility's production capacity or throughput limits, it shall comply with all applicable laws, rules and regulations and the terms of any applicable construction and operating permits, and shall demonstrate such compliance to U.S. EPA and/or WDNR as required by any such permits. Redi-Serve further agrees to demonstrate its compliance with this Consent Decree to U.S. EPA as requested by U.S. EPA.

26. Redi-Serve shall submit to U.S. EPA a copy of all stack test reports it submits to WDNR which include particulate matter testing.

#### VII. PUBLIC COMMENT

27. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments.

28. Redi-Serve shall not withdraw its consent to this Consent Decree, and hereby consents to its entry without any modifications.

## VIII. PUBLIC ACCESS TO INFORMATION

29. All information and documents submitted by Defendant to the U.S. EPA pursuant to this Consent Decree shall be subject to public inspection without further notice in accordance with 40 C.F.R. Part 2, Subpart B.

## IX. GENERAL PROVISIONS

30. This Consent Decree resolves only the civil claims of the United States for the violations alleged in the Complaint. Nothing in this Consent Decree is intended to nor shall be construed to operate in any way to resolve any other civil or criminal liability of the Defendant.

31. Nothing in this Consent Decree shall relieve Defendant of the duty to comply with all applicable provisions of the CAA and other Federal, state or local laws or statutes.

33. Nothing in this Consent Decree shall be construed as prohibiting, altering or in any way limiting the ability of the United States or U.S. EPA to seek any other remedies or sanctions available by virtue of Defendant's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Defendant's violation of any applicable provision of law.

34. Nothing in this Consent Decree shall be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

35. This Consent Decree does not limit or affect the rights of Defendant or the United States against any third parties.

36. Each Party to this action shall bear its own costs and attorney's fees.

37. Any modification of this Consent Decree must be in writing and approved by the Court. Any such written modification must be agreed to and signed by all parties to this Consent Decree.

38. Redi-Serve shall give notice and a copy of this Consent Decree to any successor in interest before any transfer of ownership or operational control of the Facility. This Consent Decree is binding on Defendant and any successors in interest.

39. Redi-Serve shall submit all informational reports required by this Consent Decree to U.S. EPA. All information and reports shall be sent to:

Jeff Gahris  
Air Enforcement Branch (AE-17J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

40. Pursuant to Section 114 of the Act, 42 U.S.C. § 7414, the Administrator or any authorized representative of U.S. EPA, upon presentation of his or her credentials, shall have the right of entry into, upon and through the Redi-Serve facility for the purpose of carrying out any inspections, taking photographs, and reviewing any records, and, subject to applicable safety requirements, observing tests, and conducting any tests, which are deemed by U.S. EPA to be necessary to ensure compliance with this Consent Decree.

#### **X. RETENTION OF JURISDICTION**

41. This Court shall retain jurisdiction to modify or enforce the terms of this Consent Decree or to take any action necessary or appropriate for its construction or execution.

## IX. TERMINATION

42. This Consent Decree shall be terminated upon motion by either party after eighteen months of operation from the date of entry of the Consent Decree provided that Defendant has satisfied all requirements of the Consent Decree including payment of all penalties and provided that Defendant has satisfied all requirements of the Consent Decree and is in compliance with the Act. The United States may oppose a motion by Defendant and any such opposition shall be resolved by the Court. Until such termination, this Court retains jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of the agreement may not be used as evidence in any litigation between the parties.

## XII. SIGNATORIES

43. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind such party to this Decree.

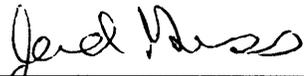
SO ORDERED THIS 30<sup>th</sup> DAY OF May, 2000.

Margaret B. Crabb

United States District Court Judge

Through their undersigned representatives, the parties agree and consent to entry of the foregoing Consent Decree in United States of America v. Redi-Serve Foods Limited Partnership, Civil Action No. [INSERT]

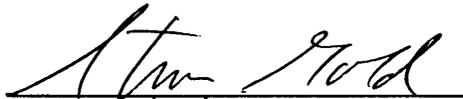
FOR PLAINTIFF  
UNITED STATES OF AMERICA:



Date: 3-13-2000

JOEL M. GROSS

Chief, Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice



Date: 3/21/00

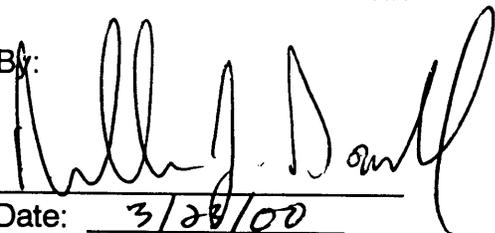
STEVE C. GOLD

Trial Attorney  
United States Department of Justice  
Environmental Enforcement Section  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Through their undersigned representatives, the parties agree and consent to entry of the foregoing Consent Decree in United States of America v. Redi-Serve Foods Limited Partnership, Civil Action No. [INSERT].

PEGGY A. LAUTENSCHLAGER  
United States Attorney  
Western District of Wisconsin

By:



Date: 3/28/00

MULLEN J. DOWDAL  
Assistant United States Attorney  
660 W. Washington Avenue, Suite 200  
P.O. Box 1585  
Madison, WI 53701-1585  
(608) 264-5158

Through their undersigned representatives, the parties agree and consent to entry of the foregoing Consent Decree in United States of America v. Redi-Serve Foods Limited, Civil Action No. [INSERT].

BY:  Date: 3/21/00

FRANCIS X. LYONS  
Regional Administrator  
Region 5  
United States Environmental  
Protection Agency

 Date: 2/18/00

ANDRE DAUGAVIETIS  
Associate Regional Counsel  
Region 5  
United States Environmental  
Protection Agency  
77 West Jackson Boulevard  
Chicago, IL 60604

Through their undersigned representatives, the parties agree and consent to entry of the foregoing Consent Decree in United States of America v. Redi-Serve Foods Limited Partnership.

FOR DEFENDANT  
REDI-SERVE FOODS LIMITED PARTNERSHIP

BY: Gary Schimek  
Gary Schimek  
Redi-Serve Foods Limited Partnership  
1200 Industrial Drive  
Fort Atkinson, WI 53538

Date: 2/24/00