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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
SEABOARD FOODS LP, and	)	Civil No.
	)	
PIC USA, INC.,	)	
	)	
Defendants.	)	

CONSENT DECREE

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Whereas the United States of America (the "United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a complaint alleging that the Defendants, Seaboard Foods LP and PIC USA, Inc., have violated Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. ("RCRA") by failing to comply with an EPA Administrative Order issued on June 26, 2001 under RCRA;

Whereas the Complaint alleges that Defendants failed to comply with several requirements of the EPA Administrative Order, which directed Defendants to, *inter alia*, investigate suspected contamination at and near various of Defendants' farming operations, as listed in Appendix A, with the exception of the Choate Farm in Kingfisher County, Oklahoma, which is not subject to EPA's Administrative Order;

Whereas Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

Whereas Defendants contest the factual and legal basis for EPA's Order, as well as the existence of any contamination resulting from Defendants' activities;

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

NOW THEREFORE, 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, *inter alia*, 28 U.S.C. §§ 1331, 1345, and 1355 and also has personal jurisdiction over the Parties. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because Defendants have conducted business in this judicial district and the violations alleged in the

Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree or such action and over Defendants, and consent to venue in this judicial district.

2. Only for purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted.

3. Notice of the commencement of this action has been given, in writing, to the State of Oklahoma.

II. APPLICABILITY

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

5. No transfer of ownership or operation of any Seaboard Foods facility subject to this Decree, whether in compliance with this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of the Decree are implemented, unless (1) the transferee agrees to undertake the obligations of this Decree and to be substituted for the Defendant(s) as a Party under the Decree and be thus bound by the terms thereof, and (2) the United States consents to relieve Defendant(s) of its obligations. On or before such transfer, Defendant Seaboard Foods shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer to EPA Region 6 and the United States Department of Justice, in accordance with Section XIII of this Decree (Notices and Submittals). Any attempt to transfer ownership or operation of any Seaboard Foods facility subject to this Decree without complying with this Paragraph constitutes a violation of this Decree.

6. Defendants shall provide a copy of this Consent Decree to all officers and supervisory employees of the Defendants or their agents whose duties might reasonably include

compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendants 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.

III. DEFINITIONS

8. Terms used in this Consent decree that are defined in RCRA or in regulations promulgated pursuant to the RCRA shall have the meanings assigned to them in the RCRA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Complaint" shall mean the complaint filed by the United States in this action;

b. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXII), and all work plans called for by the Decree and approved by EPA in conformance with the Decree;

c. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

d. "Defendants" shall mean Seaboard Foods LP (formerly known as Seaboard Farms, Inc.) and PIC USA, Inc.;

e. "Direct Push Technology" (DPT) shall mean the technique used for performing subsurface investigations by driving, pushing, and/or vibrating small-diameter,

hollow steel rods into the ground, also sometimes referred to as “drive” or “drive point” or “push” technology;

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

g. “EPA Administrative Order” shall mean the order EPA issued to Seaboard and PIC International Group, Inc., Order No. RCRA-06-2001-0908, under RCRA on June 26, 2001 directing, *inter alia,* certain investigations of alleged contamination at and in the vicinity of the Facilities listed in Appendix A of this Decree (except Choate Farm);

h. “Facilities” shall mean Defendant’s Oklahoma farms, as identified in Appendix A of this Decree;

i. “Field Capacity” is the maximum amount of water that a soil can retain after excess water from saturated conditions has been drained by the force of gravity;

j. “Infrastructure Source(s)” shall mean, for purposes of this Consent Decree only, man-made structures or equipment that store or transport animal waste or effluent, including but not limited to barns, pits, lagoons, piping (including, but not limited to, subsurface piping), lift stations, and settling basins, and excluding above-ground land application and above-ground land application equipment, such as pivots, sprinklers, overland piping, and hard hose equipment;

k. “Land Application Area” is property to which manure or process wastewater from a production area is or may be applied;

l. “MNA” or “Monitored Natural Attenuation” shall have the same meaning as that provided in *Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action, and Underground Storage Tank Sites*, U.S. EPA, OSWER Directive 9200.4-17P (1999), where it is defined to mean “the reliance on natural attenuation processes (within the context of a

carefully controlled and monitored site cleanup approach) to achieve site-specific remedial objectives within a time frame that is reasonable compared to that offered by other more active methods. The "natural attenuation processes" that are at work in such a remediation approach include a variety of physical, chemical, or biological processes that, under favorable conditions, act without human intervention to reduce the mass, toxicity, mobility, volume, or concentration of contaminants in soil or groundwater. These in situ processes include biodegradation, dispersion, dilution, sorption, volatilization, and chemical or biological stabilization, transformation, or destruction of contaminants.";

m. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;

n. "Parties" shall mean the United States and Defendants;

o. "Section" shall mean a portion of this Decree identified by a roman numeral; and

p. "United States" shall mean the United States of America, acting on behalf of the U.S. EPA.

IV. CIVIL PENALTY

9. Within 30 days after the Effective Date of this Consent Decree, Defendants shall pay the sum of $240,000 as a civil penalty. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be timely provided to Defendants following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Oklahoma. At the time of payment, Defendants shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-1-1-07570/1 and the civil action number of this case) to the United States in accordance with Section XIII of this

Decree (Notices and Submittals). Failure to pay the civil penalty shall subject Defendants to interest accruing from the date payment is due until the date payment is made or until the 15th day after payment is due, whichever occurs first, at the rate prescribed by 28 U.S.C. § 1961, and shall render Defendants liable for all charges, costs, fees, and penalties established by law for the benefit of a creditor or of the United States in securing payment. Failure to pay the civil penalty for more than 14 days after it is due shall subject Defendants to the stipulated penalty set forth in Paragraph 14(a).

V. COMPLIANCE REQUIREMENTS

10. Defendants Seaboard Foods LP and PIC USA, Inc., as specified in this Consent Decree, must commence, undertake, complete, and maintain each and every requirement and term set forth in Appendices B, C, and D, including the requirements and terms established and approved under work plans established and approved under this Decree. Defendants must commence, undertake, complete, and maintain all such requirements and terms in compliance with the schedules specified in or established under this Decree.

VI. REPORTING REQUIREMENTS

11. Defendants shall comply with the reporting requirements set forth in Appendices B, C, and D.

12. In addition to any other express reporting requirement in this Consent Decree, if Defendants violate any requirement of this Consent Decree, Defendants shall notify the United States of such violation and its likely duration in writing within ten working days of the day Defendants first become aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendants will include a statement to that effect in the report. Defendants will investigate to determine the

cause of the violation and then will submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Defendants become aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendants of their obligation to provide the requisite notice for purposes of Section VIII (Force Majeure).

13. In the case of any violation or other event that may pose an immediate threat to the public health or welfare or the environment, Defendants will notify EPA orally or by electronic or facsimile transmission as soon as possible, but not later than 24 hours after Defendants first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

VII. STIPULATED PENALTIES

14. Defendants shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes Defendants' failing to comply with any requirement, term, standard, or schedule established by or covered by Sections IV, V, VI, or X of this Decree.

Consent Decree Violation	**Stipulated Penalty (per day, per violation, unless otherwise noted)**
(a) Failure to pay the civil penalty, as specified in Section IV (Civil Penalty) of this Consent Decree, for more than 14 days after the due date	$5,000 per day beginning the 15th day after the due date
(b) Failure to comply with any of the requirements in Section 1.2.1 of Appendix B regarding access	$500
(c) Failure to timely perform the DPT field study required in Section 1.2.2 of Appendix B	$500 per day per violation for the first 14 days, $1,000 per day per violation for the next 14 days; 3,000 per day per violation thereafter

(d) Failure to timely perform any of the requirements in Section 1.2.4 of Appendix B regarding MNA monitoring	$1,000 per day per violation for the first 14 days, $2,500 per day per violation for the next 14 days; 5,000 per day per violation thereafter
(e) Failure to timely submit any sampling results required by this Consent Decree, or to timely notify EPA regarding such results, including sampling of ground water, soils, leachate, or effluent	$500 per day per sample for the first 14 days; $1,000 per day per sample for the next 14 days; $2,000 per day per sample thereafter
(f) Failure to timely submit the annual reports or any other submittals required by this Consent Decree, including by Paragraph 13, Sections 1.2.5 or 1.6 of Appendix B, Section 2.7 of Appendix C, or Section 3.3 of Appendix D	$500 per day per violation for the first 14 days; $1,000 per day per violation for the next 14 days; $2,000 per day per violation thereafter
(g) Failure to timely submit, modify, or implement, as approved, the plans, studies, analyses, protocols, or other submittals required by Section 1.4 of Appendix B (Alternative Remedies), Sections 2.2 (Lacey 6 Miller Infrastructure Response) or 2.6 (Lacey 3 Watson Response) of Appendix C, or Section 3.5 (Fairview Nursery Complex Response) of Appendix D	$500 per day per violation for the first 14 days, $1,000 per day per violation for the next 14 days; $3,000 per day per violation thereafter
(h) Failure to timely complete lagoon removal, or to comply with any of the lagoon removal requirements, as specified in Section 2.1 of Appendix C	$1,000 per day per violation for the first 14 days, $2,500 per day per violation for the next 14 days; $5,000 per day per violation thereafter
(i) Failure to comply with the requirements of Section 2.4(b) of Appendix C regarding buffer zones	$500
(j) Failure to comply with any applicable requirement of Section 2.4(c) of Appendix C regarding trigger conditions at the specified farms, except for the requirements in 2.4(c)(6)	$500 per day per violation for the first 14 days, $1,000 per day per violation for the next 14 days; $3,000 per day per violation thereafter
(k) Failure to comply with the requirements of Section 2.4(c)(6)	$2,500
(l) Failure to timely perform annual pressure testing, repairs, or retesting, as required by Section 2.5 of Appendix C	$1000

(m) Failure to timely comply with the testing and monitoring requirements of Section 3.1, 3.2, or 3.4(c)(1) or 3.4(c)(2) of Appendix D	$500 per day per violation for the first 30 days; $750 per day per violation for the next 30 days; $1,000 per day per violation thereafter
(n) Where a response action is required by Section 3.4 of Appendix D, application of effluent on subject fields prior to the implementation of Defendants' selected response action (except for the failure to perform testing requirements set forth in 3.4(c)(1) or 3.4(c)(2))	$6,000 per application per field if application of effluent is done prior to implementation of Defendants' selected response action
(o) Failure to provide EPA or its authorized representatives splits of any samples taken by Defendants pursuant to this Decree, as required by Paragraph 33	$100 per sample
(p) Failure to provide access to EPA or its authorized representatives to any facility covered by this Decree, as required by Section X	$500 per day (until the day on which Seaboard notifies EPA that access is granted)

15. Except as otherwise specified above, stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. Defendants shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand, subject to the provisions of Section IX (Dispute Resolution).

16. Unless otherwise provided in this Consent Decree, stipulated penalties shall continue to accrue as provided in Paragraph 15 above during any Dispute Resolution, with interest on accrued stipulated penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement, or by a written decision of EPA that is not appealed to the Court, Defendant shall pay accrued stipulated penalties determined

to be owing, together with accrued interest, to the United States within thirty (30) days of the effective date of the agreement or of the receipt of EPA's written decision;

b. If the dispute is appealed to the Court and EPA prevails in whole or in part, Defendants shall pay all accrued stipulated penalties determined by the Court to be owing, together with accrued interest, within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph c, below;

c. If the Court's decision is appealed by any Party, Defendants shall, within thirty (30) days of receipt of the final appellate court decision, pay all accrued stipulated penalties determined to be owing, together with accrued interest.

17. All stipulated penalties shall be paid in the manner set forth in Section IV (Civil Penalty) of this Consent Decree.

18. If Defendants fail to pay stipulated penalties in compliance with the terms of this Consent Decree, Defendants 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.

19. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due it under this Consent Decree.

20. 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 by reason of Defendants' failure to comply with any requirement of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of statutory or regulatory requirements, Defendants shall be allowed a credit for any Stipulated Penalties paid against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

21. A "force majeure event" is any event beyond the control of Defendants, their contractors, or any entity controlled by Defendants that delays the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. "Best efforts" includes using best efforts to anticipate any potential force majeure event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendants' financial inability to perform any obligation under this Consent Decree.

22. Defendants shall provide notice to the designated EPA Project Manager orally or by electronic or facsimile transmission as soon as possible, but not later than five (5) days after the time Defendants first knew, or should have known, of a claimed force majeure event. Defendants shall also provide written notice, as provided in Section XIII of this Consent Decree (Notices and Submittals), within twenty-one (21) days of the time Defendants first knew, or should have known, of the event. The written notice shall state the anticipated duration of any delay; its cause(s); Defendants' past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendants' rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendants from asserting any claim of force majeure.

23. If the United States agrees that a force majeure event has occurred, the time for the performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the United States for such time as is necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States

agrees to an extension of time, the appropriate modification can be made only pursuant to Section XVII of this Consent Decree (Modification).

24. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendants, the United States' position shall be binding, unless Defendants invoke Dispute Resolution under Section IX of this Consent Decree. In any such dispute, Defendants bear the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that Defendants gave the notice required by Paragraph 23; that the force majeure event caused any delay Defendants claim was attributable to that event; and that Defendants exercised best efforts to prevent or minimize any delay caused by the event.

IX. DISPUTE RESOLUTION

25. The dispute resolution procedure provided by this Section shall be available to resolve all disputes arising under this Consent Decree, provided that the Party invoking such procedure has first made a good faith attempt to resolve the matter with the other Parties.

26. The dispute resolution procedure required herein shall be invoked by one Party giving written notice to the other Parties advising of a dispute pursuant to this Section. The notice shall describe the nature of the dispute and shall state the noticing Party's position with regard to such dispute. The Parties receiving such a notice shall acknowledge receipt of the notice, and the Parties in dispute shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days following receipt of such notice, or at a later time by mutual agreement of the Parties.

27. Disputes submitted to dispute resolution under this Section shall, in the first instance, be the subject of informal negotiations among the disputing Parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of

the first meeting among the disputing Parties' representatives, provided that the Parties may agree in writing to shorten or extend this period.

28. If the disputing Parties are unable to reach agreement during the informal negotiation period, the United States shall provide Seaboard and PIC with a preliminary decision, setting forth its position regarding the dispute. Defendants shall have thirty (30) days to provide a response to such preliminary decision, together with any supporting documentation. Following this 30-day period, the United States shall issue a final decision, which shall be considered binding unless, within forty-five (45) calendar days thereafter, Seaboard or PIC seeks judicial resolution of the dispute by filing a petition with the Court. The United States may respond to the petition within forty-five (45) calendar days of filing. Where appropriate, the United States may allow the Parties to submit supplemental statements of position after the United States issues its final decision.

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

30. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree that is not directly in dispute. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 16, above. If Defendants do not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

31. After the resolution of any dispute under this Section, nothing prohibits either Party from seeking Court approval to modify this Consent Decree, in appropriate circumstances, so as

to extend the schedule or deadlines for the completion of required activities that were the subject of dispute resolution. Where this Court enters such an extension or schedule modification, Defendants shall be liable for stipulated penalties for their failure thereafter to complete the work in accordance with the extended or modified schedule, provided that they shall not be precluded from asserting that a Force Majeure Event has caused or may cause a delay in complying with the extended or modified schedule.

32. In any dispute under this Section, Defendants shall bear the burden of demonstrating that their position complies with this Consent Decree. All disputes related to Sections 1.3.1 (Periodic Performance Evaluations) or 1.4 (Alternative Remedies) in Appendix B, Sections 2.2 (Lacey 6 Miller Infrastructure Response) or 2.6 (Lacey 3 Watson Response) in Appendix C, or Section 3.5 (Fairview Nursery Complex Response) in Appendix D, are to be decided on the administrative record, and the United States' position shall be upheld unless it is held to be arbitrary and capricious or otherwise not in accordance with law. With respect to all other disputes, the Parties reserve their rights to argue their respective positions as to the applicable standard of law for resolving the particular dispute at issue. An administrative record of any dispute submitted to dispute resolution under this Section shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section.

X. INFORMATION COLLECTION AND RETENTION

33. During the pendency of this Decree, the United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry to any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials and in conformance with any reasonable biosecurity requirements of the facility, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. independently obtain samples and conduct such tests as the United States deems necessary to assess Defendants' performance under this Decree and, upon request, splits of any samples taken pursuant to this Decree by Defendants or their representative, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data using a camera, video camcorder, sound recorder, or other similar documentary type equipment relevant to assessing Defendants' performance under this Decree;

e. interview site personnel and contractors; inspect records, operating logs, and contracts related to the Defendants' performance under this Consent Decree; and

f. otherwise assess Defendants' compliance with this Consent Decree.

If Defendants deny access to any farm or facility on the basis of biosecurity requirements, EPA may request a written justification of such denial from Seaboard's Director of Environmental Affairs or, if such person cannot be reached, from Seaboard's Director of Environmental, Maintenance and Construction, and Seaboard shall provide such justification by electronic mail and, if requested by EPA, also by facsimile (electronic mail address and facsimile number to be provided by EPA at the time of the request) within 12 hours of receipt of EPA's request.

34. Upon request, Defendants shall provide EPA or its authorized representatives splits of any samples taken by Defendants pursuant to this Decree. Upon request, EPA shall provide Defendants splits of any samples taken by EPA pursuant to this Decree.

35. Pursuant to this Section, any denial of the access and entry rights provided in Paragraph 33 shall be construed as a violation of the terms of this Decree subject to the penalty provisions outlined in Section VII (Stipulated Penalties) of this Decree.

36. Until five (5) years after the termination of this Consent Decree, Defendants shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all records, documents, or other information (including documents, records or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate to Defendants' performance of their obligations under the Consent Decree. If any single Appendix is terminated prior to the termination of the Consent Decree, as to the documents that relate to Defendants' performance of their obligations under that Appendix, this document retention requirement shall extend until five (5) years after the termination of that Appendix. This record retention requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States may request copies of any documents or records required to be maintained under this Paragraph.

37. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain records or information imposed by applicable federal or state laws, regulations, or permits.

XI. COVENANTS NOT TO SUE, REOPENERS, AND RESERVATIONS OF RIGHTS

A. COVENANTS NOT TO SUE

38. In consideration of the actions that will be performed and the payments that will be made by the Defendants under the terms of this Consent Decree, and except as specifically

provided below, the United States covenants not to sue or take administrative action against Defendants:

a) for the violations the United States specifically alleged in the Complaint filed in this action, through the date of lodging of this Consent Decree;

b) pursuant to section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, section 504 of the Clean Water Act ("CWA"), 33 U.S.C. § 1364, section 1431 of the Public Health Service Act (or "Safe Drinking Water Act" or "SDWA"), 42 U.S.C. § 300(i), or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9606, for corrective action or other response measures intended to address a release of nitrate-nitrogen from Infrastructure Sources that occurred (i) prior to lodging of this Decree and (ii) at Lacey 1 (Bryan Sow & Norris Farms), Lacey 4 (Grimes Finisher), Lacey 6 (Miller), Lacey 3 (Watson), or the Fairview Nursery Complex (as these Facilities are specified in Appendix A); and

c) pursuant to section 7003 of RCRA, 42 U.S.C. § 6973, section 1431 of the SDWA, 42 U.S.C. § 300i, section 106 of CERCLA, 42 U.S.C. § 9606, or section 504 of the CWA, 33 U.S.C. § 1364, and for a period of two years commencing upon lodging of this Consent Decree, for corrective action or other response actions intended to address nitrate-nitrogen contamination downgradient of the Fairview Nursery Complex that is attributable to Defendants' activities at that Facility other than releases from Infrastructure Sources that occurred prior to lodging of this Decree.

These covenants are conditioned upon the Defendants' performance of their obligations under this Consent Decree. These covenants extend only to the Defendants and not to any other person.

39. The covenants set forth in Paragraph 38 shall take effect upon the receipt of the Defendants' payment of the civil penalty set forth in Paragraph 9.

B. REOPENERS

40. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right of the United States to institute proceedings in this action or in a new action to compel Defendants to perform further work and for such other relief as is provided by law, if:

a) conditions at, or caused or contributed to by, the Facilities listed in Paragraph 38(b)(ii) above, previously unknown to EPA, are discovered, or

b) information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicates that the provisions of this Consent Decree are not protective of human health or the environment.

41. For purposes of Paragraph 40, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of lodging of this Decree regarding the Farms listed in Appendix A. All such information and conditions shall be set forth in the Administrative Record supporting this matter (herein referred to as the "Administrative Record" or "Record"), which shall be compiled as follows: No later than 60 days after entry of this Decree, EPA shall provide Defendants with an index to the proposed Administrative Record and provide Defendants an opportunity to review the entire Record at EPA's Regional offices in Dallas, Texas. At any time within the first 60 days following such notification to Defendants of the availability of the proposed Record, Defendants may submit a request to EPA that additional documents or other materials be included in the Record. EPA will, within 30 days of receipt of such request, inform Defendants as to whether such documents or

other materials will be included in the Record and, if EPA declines to include any document or other material, EPA will provide a supporting explanation. Any disputes regarding the inclusion of documents or other materials in the Administrative Record pursuant to this Paragraph shall be resolved pursuant to Section IX (Dispute Resolution).

C. SPECIALIZED RESERVATIONS OF RIGHTS

42. Reservation of Rights as to Ground Water Contamination from Defendants' Activities at the Fairview Nursery Complex. Effective upon entry of this Consent Decree, and notwithstanding any other provision of this Decree, the United States reserves all statutory authorities relating to imminent and substantial endangerment, including but not limited to the right to seek injunctive relief pursuant to section 7003 of RCRA, 42 U.S.C. § 6973, section 1431 of the SDWA, 42 U.S.C. § 300i, section 504 of the CWA, 33 U.S.C. § 1364, or section 106 of CERCLA, 42 U.S.C. § 9606, relating to nitrate-nitrogen contamination downgradient of the Fairview Nursery Complex that is attributable to Defendants' activities at that Facility other than releases from Infrastructure Sources that occurred prior to lodging of this Decree.

43. Before filing a complaint seeking a response action based on one of the authorities named in Paragraph 42, or issuing an administrative order seeking a response action based on one of the authorities named in Paragraph 42, at any time within the first six years after entry of this Consent Decree, the United States shall:

a) notify Defendants of the basis and authority for its finding and provide Defendants a reasonable opportunity to confer with EPA regarding EPA's concerns, appropriate responses, and any ongoing or proposed response actions;

b) take any information provided by Defendants during such opportunity to confer into account in determining whether and how to exercise EPA's statutory authorities; and

c) invoke the procedures set forth in Paragraph 3.5.3 of Appendix D (Fairview Response Plan) unless EPA finds that these procedures are insufficient to adequately protect human health or the environment.

44. Reservation of Rights as to Nitrate-Nitrogen Contamination from Infrastructure Sources at the Lacey 1 (Bryan Sow & Norris Farms), Lacey 4 (Grimes Finisher), Lacey 6 (Miller), Watson and the Fairview Nursery Complex. Effective (a) at Lacey 1 (Bryan Sow and Norris Farms), Lacey 4 (Grimes Finisher), and Lacey 6 (Miller) upon the termination, pursuant to Section 1.5 of Appendix B, of either the MNA remedy or any Alternative Remedy described in Section 1.4, and (b) at Watson Farm and the Fairview Nursery Complex upon entry of this Consent Decree, and notwithstanding any other provision of this Decree, the United States reserves all statutory authorities relating to imminent and substantial endangerment, including but not limited to the right to seek injunctive relief pursuant to section 7003 of RCRA, 42 U.S.C. § 6973, section 1431 of the SDWA, 42 U.S.C. § 300i, section 504 of the CWA, 33 U.S.C. § 1364, or section 106 of CERCLA, 42 U.S.C. § 9606, to address a release of nitrate-nitrogen from Infrastructure Sources that occurred prior to lodging of this Decree at any of the Facilities listed in Paragraph 38(b)(ii) above.

45. Before filing a complaint seeking a response action based on one of the authorities named in Paragraph 44, or issuing an administrative order seeking a response action based on one of the authorities named in Paragraph 44, the United States shall:

a) notify Defendants of the basis and authority for its finding and provide Defendants a reasonable opportunity to confer with EPA regarding EPA's concerns, appropriate responses, and any ongoing or proposed response actions; and

b) take any information provided by Defendants during such opportunity to confer into account in determining whether and how to exercise EPA's statutory authorities.

46. If the Defendants wish to contest any of the United States' conclusions made pursuant to Paragraph 45 regarding the exercise of its above-named statutory authorities, following the notification and opportunity to confer set forth in subparagraphs 45(a) and (b) above, Defendants may seek judicial resolution of such dispute pursuant to Section IX (Dispute Resolution) of this Decree and applicable principles of law for resolving such disputes.

D. GENERAL RESERVATIONS OF RIGHTS

47. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 38. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under RCRA, the CWA, the SDWA, CERCLA, or their implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 38.

48. Except as expressly provided in this Consent Decree, the United States retains all authority and reserves all rights to take any and all actions authorized by law. Except as otherwise provided in this Consent Decree, Defendants retain any rights and defenses with respect to any such actions taken by the United States, and entry of this Consent Decree and Defendants' consent to comply therewith shall not constitute a waiver of any valid defense, either legal or equitable, to such action.

E. OTHER PROVISIONS

49. Upon entry of this Consent Decree, the Administrative Order, Order No. RCRA-06-2001-0908, which EPA issued on June 26, 2001 under RCRA shall be deemed withdrawn.

50. Defendants are responsible for achieving and maintaining compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendants' compliance

with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with the law.

51. This Consent Decree does not limit or affect the rights of Defendants or of the United States 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 Defendants, except as otherwise provided by law.

52. 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.

53. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facilities or Defendants' violations, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, provided, however, that nothing in this Paragraph is intended to affect the enforceability of the covenants set forth in Paragraph 38.

XII. COSTS / FEES

54. Except as specified in this Section of the Decree, all the Parties shall bear their own costs and fees of this action, including attorneys' fees.

55. The United States shall be entitled to collect the costs (including attorneys' fees) incurred in any enforcement necessary to collect any portion of the Civil Penalty or any Stipulated Penalties due but not paid by Defendants.

XIII. NOTICES AND SUBMITTALS

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

As to the United States:
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, DC 20044-7611
Re: DOJ No. 90-5-1-1-07570

Director
Compliance Assurance and Enforcement Division
United States Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Gene Keepper, CHMM, P.G., RCRA Project Manager (6EN-HX)
Compliance Assurance and Enforcement Division
United States Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 900
Dallas, TX 75202-2733
Telephone: (214) 665-2280
Telecopier: (214) 665-7264
E-mail: Keepper.Gene@epa.gov

As to Defendant Seaboard Foods LP:
Jennifer Charno Nelson
Director of Environmental Affairs
Seaboard Foods LP
9000 W. 67th Street, Suite 200
Shawnee Mission, KS 66202

David Becker
Vice President and General Counsel
Seaboard Corporation
9000 W. 67th Street, Suite 300
Shawnee Mission, KS 66202

Richard Schwartz
Crowell & Moring, LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595

As to Defendant PIC USA, Inc.:
Gerry Daignault, Finance Director
PIC USA, Inc.
100 Bluegrass Commons Blvd.
Suite 2200
Hendersonville, TN 37075

Leslie Sanders, General Counsel
PIC USA, Inc.
100 Bluegrass Commons Blvd.
Suite 2200
Hendersonville, TN 37075

Carrick Brooke-Davidson
Andrews Kurth LLP
111 Congress Avenue, Suite 1700
Austin, TX 78701
512-320-9263
512-542-5201 (fax)

As to both Defendants, Seaboard Foods LP and PIC USA, Inc.
Mark P. Hemingway
Geomatrix Consultants
5725 Highway 290 West
Suite 200B
Austin, TX 78735
Business: (512) 494-0333
Business Fax: (512) 494-0334

57. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice addresses or, in the case of the EPA, the Project Manager provided above.

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

59. Where Defendants are required to provide oral notification to EPA, Defendants shall provide such oral notice to the designated EPA Project Manager named above and/or to the current Director of EPA Region VI, Compliance Assurance and Enforcement Division.

60. Two (2) copies of all documents, including Plans, Reports, and other correspondence to be submitted pursuant to this Decree, shall be hand-delivered or sent by certified mail, return receipt requested, to the EPA Project Manager. Respondents shall also submit a copy of all submittals on 3.5 inch computer disk or compact disk.

61. In all instances wherein this Decree requires written submissions to EPA, each submission shall be signed and certified as follows by a duly authorized representative of the submitting Defendant(s); provided that annual reports, requests for termination of any Appendix or this Consent Decree, and the 21-day written notice of a force majeure event required by Paragraph 22 shall be signed and certified as follows by an official of the submitting Defendant(s):

> To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of a materially false statement.

Any submissions made pursuant to Section IX (Dispute Resolution) and paragraph 41 (regarding compilation of the Administrative Record) may be signed by an attorney representing the submitting Defendant, and, if so signed, need not be certified.

XIV. SUBMISSIONS REQUIRING EPA APPROVAL

62. After review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree and approved by EPA, EPA shall, in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; (d) disapprove the submission or (e) any combination of the above.

63. If the aforementioned submission is approved pursuant to Paragraph 62(a), Defendants shall take all actions required by the plan, report, or other item, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 62(b) or (c), Defendants shall, upon written direction of EPA take all actions required by the approved plan, report, or other items that EPA determines are technically severable from any disapproved portions, subject to Defendants' right to dispute only any conditions imposed by EPA or any disapproved portions under Section IX of this Decree (Dispute Resolution).

64. If the submission is disapproved in whole or in part pursuant to Paragraph 62(c) or (d), Defendants 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. Any Stipulated Penalties applicable to the original submission as provided in Section VII of this Decree shall accrue during the forty-five (45)-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendants' obligations under this Decree, Defendants shall be deemed to

have failed to submit a plan, and the Stipulated Penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

65. If a resubmitted plan, report, or other item that requires EPA approval, or portion thereof, is disapproved in whole or in part, EPA may again require Defendants to correct any deficiencies, in accordance with this Section, subject to Defendants' right to invoke Dispute Resolution and EPA's right to seek Stipulated Penalties as provided in the preceding Paragraphs.

66. All plans, reports, and other items required to be submitted to and approved by EPA under this Consent Decree shall, upon written approval by EPA, be enforceable under this Consent Decree. In the event EPA approves or conditions a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, such approval shall be in writing, and the approved, modified or conditioned portion shall be enforceable under this Consent Decree.

XV. EFFECTIVE DATE

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

XVI. RETENTION OF JURISDICTION

68. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree (Dispute Resolution, Section IX) or entering orders modifying this Decree (Modification, Section XVII), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

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

70. Upon their being approved by EPA, any work plans called for by Appendices B, C, or D of this Decree and otherwise in conformance with the requirements of this Decree shall be incorporated by reference into this Decree.

XVIII. TERMINATION

71. After Defendants have satisfactorily completed performance of all of their obligations under this Consent Decree, or all of their obligations under any single Appendix to this Consent Decree, and have paid the civil penalty and any accrued Stipulated Penalties as required by this Consent Decree, Defendants may serve upon the United States a Request for Termination of the Consent Decree, or any single Appendix thereto, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation. If the United States agrees that the entire Decree, or the relevant Appendix thereof, may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree in full or the relevant Appendix thereof.

72. If the United States does not agree that the Decree or the relevant Appendix may be terminated, Defendant may invoke Dispute Resolution under Section IX of this Decree.

73. Any termination of this Consent Decree pursuant to this Section, whether by the consent of the Parties or by Order of this Court, shall not affect or otherwise terminate the provisions of Section XI (Covenants Not to Sue, Reopeners, and Reservations of Rights), which shall survive any termination of this Decree or any Appendix or subpart thereof.

XIX. PUBLIC PARTICIPATION

74. This Consent Decree shall be lodged with the Court and is subject to a period for public notice and comment procedures described at 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or

inadequate. This Consent Decree is also subject to the opportunity for a public meeting as described in Section 7003(d) of RCRA, 42 U.S.C. § 6973(d). Defendants consent to entry of this Consent Decree without further notice.

XX. SIGNATORIES / SERVICE

75. The Order of the Environmental Appeals Board, Consent Agreement and Proposed Final Order for Animal Feeding Operations – Seaboard Foods LP (Aug. 21, 2006), provides, inter alia, that "the [Consent Agreement and Proposed Final Order] shall be null and void in its entirety on September 16, 2006, unless, prior to that date, the United States lodges in federal district court one or more proposed Consent Decrees that alone, or in combination, resolve alleged violations of RCRA, the Clean Air Act, the Clean Water Act, CERCLA and EPCRA, at Respondent's Farms." In light of this Order, the signatures of the authorized representative of the Defendants affixed hereto, and Defendants' consent to be bound by this Consent Decree, are valid if and only if this Consent Decree is lodged in this Court no later than September 15, 2006.

76. Each undersigned representative of Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

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

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

79. Defendants and the United States agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal

service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION / APPENDICES

80. This Consent Decree and its Appendices – plus any EPA-approved, post-entry work plans which were called for by an Appendix to this Decree and which were approved by EPA in conformance with this Decree – constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and submittals that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. LIST OF APPENDICES

81. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is List of Facilities;

"Appendix B" is Ground Water Remediation;

"Appendix C" is Changes to Barns, Lagoons, and Piping;

"Appendix D" is Effluent Management, Testing, Application and Response Actions

XXIII. FINAL JUDGMENT

82. 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 and Defendants.

Dated and entered this __ day of _____, ____.

_____

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP and PIC USA, Inc., (W.D. Okla.).

FOR THE UNITED STATES OF AMERICA:

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environmental and Natural Resources Division
United States Department of Justice
Washington, DC 20530

NICOLE VEILLEUX
Trial Attorney
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP and PIC USA, Inc., (W.D. Okla.).

FOR THE UNITED STATES OF AMERICA (continued):

JOHN C. RICHTER
United States Attorney for Western District of Oklahoma

/s/ Steven K. Mullins
_____
STEVEN K. MULLINS, OBA #6504
Assistant United States Attorney
210 Park Avenue, Suite 400
Oklahoma City, OK 73102
405/553-8804
Steve.mullins@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP and PIC USA, Inc., (W.D. Okla.).

FOR THE UNITED STATES OF AMERICA (continued):

GRANTA Y. NAKAYAMA
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP and PIC USA, Inc., (W.D. Okla.).

FOR THE UNITED STATES OF AMERICA (continued):

_____

RICHARD E. GREENE
Regional Administrator
U.S. Environmental Protection Agency - Region 6

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP and PIC USA, Inc., (W.D. Okla.).

FOR THE DEFENDANT, Seaboard Foods LP:

9/11/06
Date

Rod K. Brenneman
President, Seaboard Foods LP

LEGAL REVIEW: DMB

Date

Richard Schwarz
Attorney for Seaboard Foods LP
Crowell & Moring, LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595

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FOR THE DEFENDANT, Seaboard Foods LP:

Date

Rod K. Brenneman
President, Seaboard Foods LP

9/11/06
Date

Richard Schwartz
Attorney for Seaboard Foods LP
Crowell & Moring, LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595

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FOR THE DEFENDANT, PIC USA, Inc.:

9/11/06
Date

Gerry Daigneault
Finance Director
PIC USA, Inc.

Date

Carrick Brooke-Davidson
Attorney for PIC USA, Inc.
Andrews Kurth L.L.P
111 Congress Avenue, Suite 1700
Austin, TX 78701

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Seaboard Foods LP and PIC USA, Inc., (W.D. Okla.).

FOR THE DEFENDANT, PIC USA, Inc.:

Date

Gerry Daignault
Finance Director
PIC USA, Inc.

09/11/06
Date

Carrick Brooke-Davidson
Attorney for PIC USA, Inc.
Andrews Kurth L.L.P
111 Congress Avenue, Suite 1700
Austin, TX 78701