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|--------|----------------|
| Site: | Farmers mutual |
| ID #: | 1A0022/93577 |
| Break: | 10.6 |
| Other: | N/D |

IN THE UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF IOWA
 WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIDWEST FARMERS COOPERATIVE,

Defendant.

)
)
)
)
)
)
)
)
)
)

Civil Action No. _____

CONSENT DECREE

134539



S00125964
 SUPERFUND RECORDS

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil Action No. _____
)
 MIDWEST FARMERS COOPERATIVE,)
)
 Defendant.)
)

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Farmers Mutual Cooperative Superfund Site in Hospers, Sioux County, Iowa, ("the Site").

B. The defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 9607 and 9613(b), and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and its officers, directors, agents, 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 the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Consent Decree" shall mean this Consent Decree and the appendix attached hereto. In the event of conflict between this Consent Decree and the appendix, this Consent Decree shall control.

c. "Day" shall mean a calendar 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. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

h. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and the Settling Defendant, Midwest Farmers Cooperative.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the EPA or DOJ on behalf of the EPA has paid at or in connection with the Site through the date of lodging of this Consent Decree, plus accrued Interest on all such costs through such date.

k. "Plaintiff" shall mean the United States.

l. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

m. "Settling Defendant" shall mean the Midwest Farmers Cooperative.

n. "Site" shall mean the Farmers Mutual Cooperative Superfund site, encompassing approximately 6 acres, located in the Northwest 1/4 of the Southeast 1/4

of Section 3, Township 95 North, Range 43 West, Sioux County, in the City of Hospers, Iowa, and generally shown on the map included as Appendix A.

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Within thirty (30) days of entry of this Consent Decree, Settling Defendant shall pay to the EPA Hazardous Substance Superfund \$165,000 in reimbursement of Past Response Costs.

5. Payment by Settling Defendant shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 1999V00461, the EPA Region and Site Spill ID Number 07-Q8, and DOJ Case Number 90-11-3-06463. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Iowa following the lodging of this Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

6. At the time of payment, Settling Defendant shall send notice that payment has been made to the EPA and DOJ in accordance with Section XII (Notices and

Submissions) and to the EPA, Region VII, Financial Management Officer, 901 N. 5th Street, Kansas City, KS 66101.

VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

7. Interest on Late Payments. In the event that any payment(s) required by Paragraph 4 (Reimbursement of Response Costs) or paragraph 8 (Stipulated Penalty), are not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

8. Stipulated Penalty.

a. If any amounts due under Paragraph 4 are not paid by the required due date, Settling Defendant shall be in violation of this Consent Decree and shall pay as a stipulated penalty, in addition to the Interest required by Paragraph 7, \$1,000.00 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by the EPA. All payments to the EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to the "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 07-Q8, USAO File Number 1999V00461 and DOJ Case Number 90-11-3-06463 and shall be sent to: **United States Attorney's Office, Financial Litigation**

Unit, P.O. Box 74950, Cedar Rapids, IA 52407-4950. At the time of each payment, Settling Defendant shall send notice that such payment has been made to the EPA and the United States in accordance with Section XII (Notices and Submissions) and to the EPA, Region VII, Financial Management Officer, 901 N. 5th St., Kansas City, KS 66101.

c. Penalties shall accrue as provided in this Paragraph regardless of whether the EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

9. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to the costs of attorneys' time.

10. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

11. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

12. The United States shall be deemed a judgment creditor for purposes of collection of any amounts due under this Decree. If Settling Defendant does not timely pay any amount due under this Consent Decree, this Decree shall be considered an enforceable judgment for purposes of post-judgment collection of any amounts due, including interest and penalties, under Federal Rule of Civil Procedure 69 and other applicable statutory authority without further order of this Court.

13. If Settling Defendant files a voluntary petition in bankruptcy, or is adjudicated bankrupt under the Bankruptcy Code of the United States, or is the subject of a petition in federal or state court for the appointment of a trustee or receiver in bankruptcy or insolvency, or makes a general assignment for the benefit of creditors, immediate notice shall be given to the Financial Litigation Unit of the U.S. Attorney's Office in Cedar Rapids, Iowa, and to the EPA, Office of Regional Counsel, Region 7, Kansas City, Kansas. At the option of the United States, upon the occurrence of any of the above listed events, the full balance of all outstanding penalties, together with accrued interest, may be declared immediately due and payable.

VII. COVENANT NOT TO SUE BY UNITED STATES

14. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 15 (Reservation of Rights by United States), the United States covenants not to sue Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for payment of **Past Response Costs**. This covenant not to sue shall take

effect upon receipt by the EPA of the payment required by Section V (Reimbursement of Response Costs) and any amounts due under Section VI (Failure to Comply with Requirements of Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

15. Reservations of Rights by United States. The covenant not to sue set forth in Paragraph 14 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters, including but not limited to:

- a. liability for the failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- c. criminal liability;
- d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 6906; and
- e. liability for costs incurred or to be incurred by the United States that are not within the definition of **Past Response Costs**.

VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANT

16. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at the Site for which the Past Response Costs were incurred; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

17. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

18. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party

may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

19. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs.

20. The Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify the EPA and DOJ in writing no later than sixty (60) days prior to the initiation of such suit or claim. The Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify the EPA and DOJ in writing within ten (10) days of service of the complaint or claim upon it. In addition, the Settling Defendant shall notify the EPA and DOJ within ten (10) days of service or receipt of any Motion for Summary Judgment, and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

21. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant 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 affects the enforceability of the Covenant Not to Sue by United States set forth in Section VII.

22. Access to Information. Settling Defendant shall provide to the EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

23. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Documents or information determined to be confidential by the EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to the EPA, or if the EPA has notified Settling Defendant that the documents or information are not confidential under the standards of

Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendant.

b. Settling Defendant may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing documents or information, they shall provide Plaintiff with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or information created or generated pursuant to the requirements of this or any other Consent Decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document or information, the document or information shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all documents or information that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

24. No claim of confidentiality shall be made with respect to any data, including but not limited to, **all sampling, analytical, monitoring, hydrogeologic, scientific,**

chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

X. RETENTION OF RECORDS

25. Until five (5) years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all documents or information now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

26. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify the EPA and DOJ at least ninety (90) days prior to the destruction of any such documents or information; and, upon request by the EPA or DOJ, Settling Defendant shall deliver any such documents or information to the EPA. Settling Defendant may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, they shall provide Plaintiff with the following: 1) the title of the document or information; 2) the date of the document or information; 3) the name and title of the author of the document or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document or information; and 6) the privilege asserted. However, no documents or

information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document or information, the document or information shall be provided to Plaintiff in redacted form to mask the privileged portion only. Settling Defendant shall retain all documents or information that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

27. By signing this Consent Decree, the Settling Defendant certifies that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents or information, and has fully and accurately disclosed to the EPA, all documents or information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any documents or information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant

regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XI. NOTICES AND SUBMISSIONS

28. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, the EPA, and the Settling Defendant, respectively.

As to the United States:

Robert M. Butler
Assistant U.S. Attorney
P.O. Box 74950
Cedar Rapids, IA 52407-4950
(319) 363-6333

As to the EPA:

Raymond Bosch
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, KS 66101
(913) 551-7501

As to the Settling Defendant:

James L. Pray
Brown, Winick, Graves, Gross,
Baskerville, and Schoenebaum, P.L.C.
Suite 1100, Two Ruan Center
601 Locust Street
Des Moines, IA 50309-3765
(515) 242-2400

XII. RETENTION OF JURISDICTION

29. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIII. INTEGRATION/APPENDIX

30. This Consent Decree and its appendix constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

31. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

32. 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 any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XV. EFFECTIVE DATE

33. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XVI. SIGNATORIES/SERVICE

34. Each undersigned representative of the Settling Defendant to this Consent Decree and the Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

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

36. The Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of the Settling Defendant with respect to all matters arising under or relating to this Consent Decree. The Settling Defendant hereby agrees to accept service in that manner 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.

XVI. FINAL JUDGMENT

37. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, 2000.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Midwest Farmers Cooperative, relating to the Farmers Mutual Cooperative Superfund Site in Hospers, Sioux County, Iowa.

FOR THE UNITED STATES OF AMERICA

Date: _____

JOEL M. GROSS
Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

Date: _____

DEBORAH REYHER
Senior Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20530-7611

STEPHEN J. RAPP
United States Attorney
Northern District of Iowa

Date: _____

ROBERT M. BUTLER
Assistant United States Attorney
P.O. Box 74950
Cedar Rapids, IA 52407-4950

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Midwest Farmers Cooperative, relating to the Farmers Mutual Cooperative Superfund Site in Hospers, Sioux County, Iowa.

Date: 9-5-00



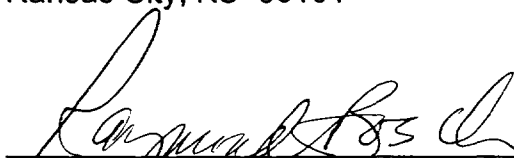
MICHAEL J. SANDERSON
Director, Superfund Division
United States Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, KS 66101

Date: 8/22/00



MARTHA R. STEINCAMP
Regional Counsel
United States Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, KS 66101

Date: August 17, 2000




RAYMOND BOSCH
Assistant Regional Counsel
United States Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, KS 66101

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America v. Midwest Farmers Cooperative, relating to the Farmers Mutual Cooperative Superfund Site in Hospers, Sioux County, Iowa.

FOR MIDWEST FARMERS COOPERATIVE

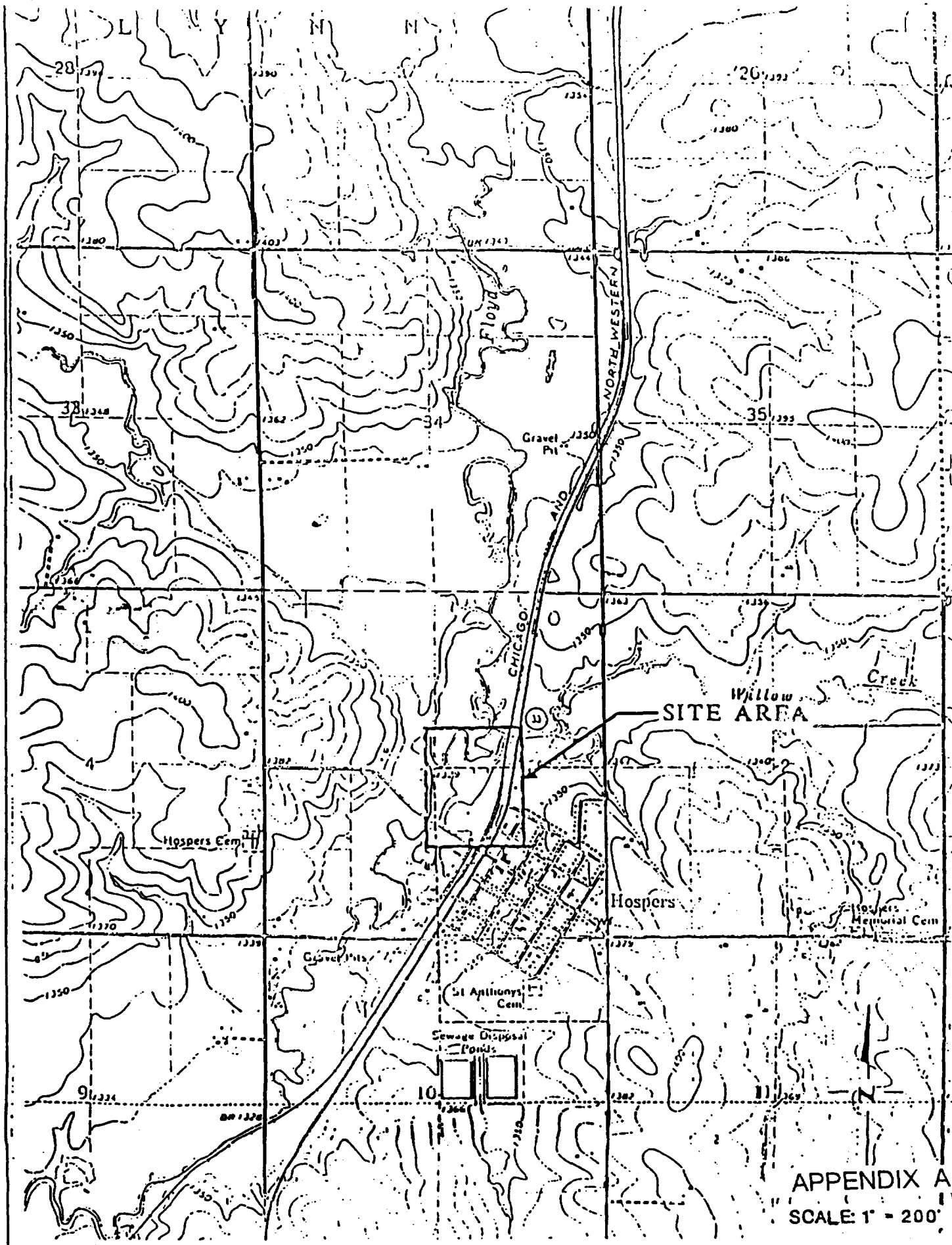
Date: 7-27-00



JAMES L. PRAY
Brown, Winick, Graves, Gross,
Baskerville, and Schoenebaum, P.L.C.
Suite 1100, Two Ruan Center
601 Locust Street
Des Moines, IA 50309-3765

Agent Authorized to Accept Service on Behalf of Midwest Farmers Cooperative:

James L. Pray
Brown, Winick, Graves, Gross,
Baskerville, and Schoenebaum, P.L.C.
Suite 1100, Two Ruan Center
601 Locust Street
Des Moines, IA 50309-3765
(515) 242-2400
FAX: (515) 283-0231



APPENDIX A
SCALE: 1" = 200'

FARMERS MUTUAL COOPERATIVE COMPANY

E.A. HICKOK & ASSOCIATES
DES MOINES, IOWA

MARCH

SITE LOCATION MAP

A DIVISION OF JAMES M. MONTGOMERY

FIGURE

