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

UNITED STATES OF AMERICA,

Plaintiff,

v.

FOXLEY CATTLE CO., and
ANDREW M. HAIN,

Defendants.

Civil Action No. _____
CONSENT DECREE

TABLE OF CONTENTS

I. BACKGROUND 1
II. JURISDICTION 3
III. PARTIES BOUND 4
IV. DEFINITIONS 4
V. REIMBURSEMENT OF RESPONSE COSTS TO THE EPA HAZARDOUS
SUBSTANCE SUPERFUND 7
VI. PAYMENT FOR NATURAL RESOURCE DAMAGES 9
VII. PERFORMANCE OF GROUNDWATER SAMPLING 10
VIII. ACCESS TO SITE 12
IX. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT
DECREE 15
X. COVENANT NOT TO SUE BY PLAINTIFF 19

XI.	<u>COVENANT NOT TO SUE BY SETTLING DEFENDANTS</u> . . .	23
XII.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u> .	24
XIII.	<u>ACCESS TO INFORMATION</u>	26
XIV.	<u>RETENTION OF RECORDS</u>	28
XV.	<u>CERTIFICATIONS</u>	29
XVI.	<u>NOTICES AND SUBMISSIONS</u>	31
XVII.	<u>RETENTION OF JURISDICTION</u>	32
XVIII.	<u>INTEGRATION/APPENDICES</u>	32
XIX.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u> . .	33
XX.	<u>EFFECTIVE DATE</u>	34
XXI.	<u>SIGNATORIES/SERVICE</u>	34

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 concurrently with the lodging of this Consent Decree against Foxley Cattle Co. ("Foxley") and Andrew M. Hain (collectively "Settling Defendants") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9607, as amended, seeking reimbursement of response costs incurred and to be incurred by the United States for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Mid-America Tanning Company Superfund Site ("Site"), located in Woodbury County, Iowa.

B. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register in March, 1989. See 54 Fed. Reg. 13296.

C. On August 31, 1990, EPA Region VII's Regional Administrator signed an Action Memorandum authorizing the cleanup of on-site buildings, and excavation and on-site treatment and disposal of contaminated sludge, sediments, and soil. The Action

Memorandum was accompanied by a request for an exemption from the \$2 million statutory limitation for removal actions pursuant to Section 104(c) of CERCLA, 42 U.S.C. § 9604(c). EPA's Office of Solid Waste and Emergency Response approved the statutory waiver on September 28, 1990. EPA performed removal actions under the 1990 Action Memorandum.

D. EPA performed a Remedial Investigation/Feasibility Study ("RI/FS") at the Site to identify areas of contamination and characterize the nature and extent of contamination. EPA issued RI and FS Reports in 1991.

E. On September 24, 1991, EPA issued a Record of Decision ("ROD") to address the release or the threatened release of hazardous substances at the surface and in the soil at the Site. EPA issued an amendment to the ROD in 1996.

F. In 1995, Foxley voluntarily performed a removal action at the Site in order to comply with an administrative order issued by EPA on August 10, 1994.

G. By entering into this Consent Decree, Settling Defendants do not admit any liability to Plaintiff or any other person or entity arising out of the transactions or occurrences related to the Site.

H. EPA has notified the federal Natural Resource Trustee of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under their trusteeship and

encouraged the Trustee to participate in the negotiation of this Consent Decree. The United States Department of Interior is the federal Natural Resource Trustee for the Site. The Natural Resource Trustee has participated in the negotiations, and has reached a settlement with the Settling Defendant Foxley of claims for Natural Resource Damages.

I. The United States and Settling Defendants 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 Defendants. Settling Defendants consent 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 Foxley Cattle Co. and Andrew M. Hain and their heirs, 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 Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that 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 agreement and all appendices attached hereto. In the event of conflict between this agreement and any appendix, the agreement 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. "Natural Resource Damages" or "NRD" shall mean damages for injury to, destruction of, or loss of natural resources under the trusteeship of the United States, including but not limited to the costs of assessing such injury, destruction, or loss and the costs of any natural resource damage assessments performed by the United States related to the Site.

i. "Natural Resource Trustee" shall mean the United States Department of Interior.

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

k. "Parties" shall mean the United States and the Settling Defendants.

l. "Plaintiff" shall mean the United States.

m. "Response Costs" shall mean all costs of response actions, including but not limited to direct and indirect costs, plus accrued Interest on all such costs, that the United States has incurred or will incur at or related to the Site.

n. "RCRA" shall mean the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.

o. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site issued in 1991 by the Regional Administrator, EPA Region VII, or his/her delegatee, and all amendments, modifications, and attachments thereto including the ROD Amendment issued in 1996.

p. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

q. "Settling Defendants" shall mean: (1) Foxley Cattle Co., its officers, and directors; and the following related entities and their officers and directors: Foxley Grain Co., and Flavorland Industries, Inc. (collectively "Foxley"); and (2) Andrew M. Hain.

r. "Site" shall mean the Mid-America Tanning Company Superfund site listed on the National Priorities List, which includes a former hide processing and leather tannery located in Woodbury County, Iowa approximately three miles east of the Missouri River and approximately two and one-half miles west of Interstate Highway 29 and depicted more clearly on the map included as Appendix A. The Site includes surface water and groundwater which may have been contaminated by activities at the hide processing and leather tannery.

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

V. REIMBURSEMENT OF RESPONSE COSTS TO
THE EPA HAZARDOUS SUBSTANCE SUPERFUND

4. Andrew M. Hain shall pay to the EPA Hazardous Substance Superfund \$100,000 in reimbursement of Response Costs within 30 days of the effective date of this Consent Decree.

5. Foxley shall pay to the EPA Hazardous Substance Superfund \$642,000, plus Interest as specified below, in reimbursement of Response Costs. This payment shall be made in installments in accordance with the following schedule for payment. Interest shall begin to accrue 30 days after the effective date of this Consent Decree and shall be compounded annually.

a. \$147,333 shall be paid within 30 days of the effective date of this Consent Decree.

b. An additional \$247,333, plus Interest, shall be paid within 1 year and 30 days of the effective date of this Consent Decree.

c. An additional \$247,334, plus Interest, shall be paid within 2 years and thirty days of the effective date of this Consent Decree.

6. Payments made by Settling Defendants under this Section 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 1998V00149, the EPA Region and Site Spill ID Number 07-7M, and DOJ Case Number 90-11-3-1138. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Northern District of Iowa following lodging of the 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. Settling Defendants shall send notice to EPA and DOJ that each payment installment has been made in accordance with Section XVI (Notices and Submissions). Of the total amount to be paid pursuant to this Section V (Reimbursement of Response Costs to the EPA Hazardous Substance Superfund), 40 percent shall be deposited in the EPA Hazardous Substance Superfund as reimbursement for past response costs

incurred and paid at or in connection with the Site, and 60 percent shall be deposited in the Mid-America Tanning Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance future response actions at or in connection with the Site. Any balance remaining in the Mid-America Tanning Superfund Site Special Account shall be transferred by EPT to the EPA Hazardous Substance Superfund.

VI. PAYMENT FOR NATURAL RESOURCE DAMAGES

7. Within 30 days of the effective date of this Consent Decree, Foxley shall pay \$100,000 for payment of Natural Resource Damages to the United States. Payment shall be made by Fedwire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice Account in accordance with current electronic funds transfer procedures and referencing DOJ Case Number 90-11-3-1138. This amount shall then be wire transferred to the U.S. Department of Interior (Agency Location Code 14160006) using the Department of Treasury's On-link Payment and Collection System ("OPAC"). In the OPAC documentation field, the Department of Justice will specify the U.S. Fish and Wildlife Service's Natural Resource Damage Assessment and Restoration Fund ("NRDAR") account number 14X5198 and include the following information:

14X5198 (NRDAR)
Mid-America Tanning Superfund Site - Woodbury County, Iowa
Foxley Cattle Co. - Settling Defendant

The funds shall be used solely to address injuries to, destruction of, or loss of natural resources with respect to the Site, including the restoration, replacement, or acquisition of habitat and the payment of assessment costs.

VII. PERFORMANCE OF GROUNDWATER SAMPLING

8. Foxley shall conduct and perform groundwater sampling and analysis at the Site in accordance with the Groundwater Sampling and Analysis Plan attached as Appendix B.

9. No later than sixty (60) days after entry of the Consent Decree, Foxley shall submit to EPA for approval a draft groundwater report (the "Draft Report") which shall include: (i) a summary of field activities performed; (ii) a summary of the results of analysis of groundwater samples, including quality control results; (iii) an analysis of quality and/or usability of the analytical results and any potential limitations to the usability of the results due to analytical error or uncertainty; (iv) a comparison of the sample results to the historical groundwater data obtained by EPA during the remedial investigation of the Site and an analysis of any trends that are apparent with the data; (v) an analysis of any physical or chemical factors which may impact or facilitate the transport of contaminants found in the samples through the groundwater; and (vi) an analysis of the current and potential threats to human health and the environment posed by the presence of contaminants

found in the groundwater. In addition, Foxley shall attach to the Draft Report, as an addendum, a Level IV data package of raw analytical data for all the groundwater sample results.

10. Foxley shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation", (EPA QA/R5); "Preparing Perfect Project Plans," (EPA / 600/9-88/087), and subsequent amendments to such guidelines upon notification by EPA to Foxley of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Foxley shall ensure that EPA and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Foxley in implementing the requirements of this Section. In addition, Foxley shall ensure that such laboratories shall perform all analysis according to accepted EPA methods or methods approved by EPA specifically for the requirements of this Section. Foxley shall ensure that all laboratories it uses for analysis of samples participate in an EPA or EPA-equivalent QA/QC program. Foxley shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Section will be conducted in accordance with quality assurance standards acceptable to EPA.

11. After review of the Draft Report, EPA shall: (a) accept the Draft Report; (b) revise the Draft Report; (c) direct Foxley

to revise and resubmit the Draft Report; or (d) any combination of the above. Within 30 days of notice from EPA of revisions to the Draft Report, Foxley shall submit to EPA three copies of a final report complete with revisions as directed by EPA. The final report shall include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Foxley simultaneously shall submit three copies of the final report to the State.

VIII. ACCESS TO SITE

12. Pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and Section 300.400(d)(3) of the National Contingency Plan ("NCP"), 40 C.F.R. § 300.400(d)(3), and as provided for in a May 8, 1995 agreement for access between EPA and U.S. Tanning Company, Inc. (copy attached as Appendix C), EPA designates Foxley and its contractor as EPA's duly authorized representative solely for the purpose of receiving access to conduct work at the Site as set forth in the Groundwater Sampling and Analysis Plan.

13. The United States does not assume any liability by entering into this agreement or by virtue of the designation of Foxley and its contractor as EPA's duly authorized representative under Section 104(e) of CERCLA, 42 U.S.C. 9604(e), and Section 300.400 of the NCP. Foxley shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Foxley, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Foxley and its contractor as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and Section 300.400(d)(3) of the NCP. Further, Foxley agrees to pay the United States all costs it incurs, including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Foxley, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by

or on behalf of Foxley in carrying out activities pursuant to this Consent Decree. Neither Foxley nor any such contractor shall be considered an agent of the United States.

14. The United States shall give Foxley notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 13, and shall consult with Foxley prior to settling such claim.

15. Foxley waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Foxley and any person for performance of work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Foxley shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Foxley and any person for performance of work on or relating to the Site, including, but not limited to, claims on account of construction delays.

16. No later than 15 days before commencing any on-site work, Foxley shall secure, and shall maintain until the first anniversary of the lodging of this Consent Decree, comprehensive general liability insurance with limits of one million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the

United States as an additional insured. For the duration of this Consent Decree, Foxley shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons carrying out activities on behalf of Foxley in furtherance of this Consent Decree. Prior to commencement of activities under this Consent Decree, Foxley shall provide to EPA certificates of such insurance and a copy of each insurance policy. If Foxley demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Foxley need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

IX. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

17. Interest on Late Payments. In the event that any payment required by Section V (Reimbursement of Response Costs to the EPA Hazardous Substance Superfund), Section VI (Payment for Natural Resource Damages), or Section IX, Paragraph 18 (Stipulated Penalties), is not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

18. Stipulated Penalties.

a. If any amounts due to EPA or the Natural Resource Trustee under this Consent Decree by a Settling Defendant are not paid in accordance with the schedules set forth in Sections V (Reimbursement of Response Costs to the EPA Hazardous Substance Superfund) and VI (Payment for Natural Resource Damages) of this Consent Decree, that Settling Defendant shall pay to EPA or the Natural Resource Trustee, as appropriate, a stipulated penalty, in addition to the Interest required by Paragraph 17, in the amount of \$1000 per violation per day that such payment is late.

b. If a Settling Defendant does not comply with any other requirement of this Consent Decree, including without limitation, the requirements contained in Section VII (Performance of Groundwater Sampling); Section XIII (Access to Information), Section XIV (Retention of Records), or Section XVI (Notices and Submissions), that Settling Defendant shall pay to EPA, as a stipulated penalty, in the amount of \$500 per violation per day of such noncompliance.

c. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All such payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

EPA Hazardous Substance Superfund
Mellon Bank
Attn: Superfund Accounting
EPA Region VII, Comptroller Branch
P.O. Box 360748M
Pittsburgh, PA 15251

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the EPA Region and Site Spill ID Number 07-7M, USAO File Number 1998V00149, and DOJ Case Number 90-11-3-1138.

All such payments by Foxley to the Natural Resource Trustee under this Paragraph shall be made by certified or cashiers check made payable to the "United States Department of Interior" and shall be sent to:

Chief, Division of Finance
U.S. Fish and Wildlife Service
3301 N. Fairfax Drive - Room 380
Arlington, VA 22003

Checks for stipulated penalties for violations of provisions of this Consent Decree concerning Natural Resource Damages shall include the following information:

14X5198 (NRDAR)
Mid-America Tanning Superfund Site
Woodbury County, Iowa
Foxley Cattle Co.

Copies of check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter[s], shall be sent to EPA, the Natural Resource Trustee, and DOJ as provided in Section XVI (Notices and Submissions).

d. Penalties shall accrue as provided in this Paragraph regardless of whether the United States has notified Settling Defendants 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 complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

19. If the United States brings an action against a Settling Defendant to enforce this Consent Decree, and the United States prevails in that action, in whole or in part, that Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

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

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

X. COVENANT NOT TO SUE BY PLAINTIFF

22. Covenant Not to Sue by United States. Except as specifically provided in Paragraph 23 (General Reservation of Rights by United States), Paragraph 24 (Reservation of Rights for Contamination of Groundwater), Paragraph 25 (Reservation of Rights for Unknown Conditions), and Paragraph 26 (Natural Resources Trustee Reservation of Rights) the United States covenants not to sue or take any other civil or administrative action against: Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, to undertake response actions or to recover Response Costs related to the Site; and Foxley pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for Natural Resource Damages related to the Site. With respect to Response Costs and to each Settling Defendant, this covenant not to sue shall take effect upon either: (i) receipt by EPA of all payments required of that Settling Defendant by Section V (Reimbursement of Response Costs to the EPA Hazardous Substance Superfund), and payments required under Section IX (Failure to Comply with Requirements of Consent Decree) for violations of Sections V, VI, and IX; or (ii) satisfactory completion of all work required of that Settling Defendant under Section VII (Performance of Groundwater Sampling), whichever is later. With respect to Natural Resource Damages and Foxley, covenant not to sue shall

take effect upon receipt by the Natural Resource Trustee of the payment required by Foxley under Section VI (Payment of Natural Resource Damages). This covenant not to sue with respect to any one of the Settling Defendants is conditional upon that Settling Defendant's complete and satisfactory performance of its obligations under this Consent Decree and upon the truthfulness of the certifications made by that Settling Defendant in Section XV, (Certifications). This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

23. General Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 22 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 each of the Settling Defendants, respectively, with respect to all other matters, including but not limited to:

- a. Liability for failure of that Settling Defendant to meet a requirement of this Consent Decree;
- b. Liability of Andrew M. Hain for Natural Resource Damages;
- c. Criminal liability;
- d. Liability for costs incurred or to be incurred by the United States that are not within the definition of Response Costs or Natural Resource Damages;

e. Liability of a Settling Defendant arising from the past, present, or future disposal, release, or threat of release of hazardous substances outside the Site;

f. Liability for future disposal of hazardous substances at the Site for which each Settling Defendant, respectively, may be responsible under CERCLA or RCRA.

24. Reservation of Rights for Contamination of Groundwater.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order to compel Foxley to perform further response actions or to reimburse the United States for additional costs of response related to groundwater contamination if total response costs associated with groundwater contamination at or from the Site incurred or to be incurred by the United States and/or by any other person after the date of lodging of this Consent Decree exceed \$500,000. If EPA determines that no further response is required for groundwater at or related to the Site, EPA shall so inform Foxley in writing and the Reservation of Rights for Contamination of Groundwater contained in this Paragraph shall no longer apply.

25. Reservation of Rights for Unknown Conditions.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action

or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site, or (2) to reimburse the United States for additional costs of response if: (i) conditions at the Site, previously unknown to the United States, are discovered; or (ii) information, previously unknown to the United States, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicates that the remedial action chosen in the ROD and ROD Amendment is not protective of human health or the environment.

26. Natural Resources Trustee Reservation of Rights.

Notwithstanding any other provision of this Consent Decree, the United States, on behalf of its designated Natural Resource Trustee, reserves the right to institute proceedings against Foxley in this action or in a new action seeking recovery of Natural Resource Damages that were of a type unknown to the United States or of a magnitude significantly greater than was known to the United States as of the date of lodging of the Consent Decree.

27. For the purposes of Paragraphs 25 and 26, the information and the conditions known to the United States shall include only that information and those conditions set forth in the ROD, the ROD Amendment, and in the administrative record supporting the ROD and the ROD Amendment.

XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

28. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or its employees, or against each other, with respect to Response Costs, response actions at the Site, Natural Resource Damages, 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 Response Costs were incurred or will be 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 Response Costs or arising with respect to Natural Resource Damages.

29. 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).

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

30. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person or entity who is not one of the Parties 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 of the Parties may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person or entity who is not one of the Parties.

31. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or other claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. With respect to Andrew M. Hain the "matters addressed" in this Consent Decree are Response Costs which includes costs incurred in response to groundwater conditions at or related to the Site. With respect to Foxley the "matters addressed" in this Consent Decree are Response Costs and Natural Resource Damages, which includes up to \$500,000 in future costs incurred in response to groundwater conditions at or related to the Site.

32. Each 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 EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each 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 EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

33. 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 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 affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section X (Covenant Not to Sue by Plaintiff).

XIII. ACCESS TO INFORMATION

34. Subject to the requirements of Section XIV (Retention of Records), each Settling Defendant shall provide to EPA, upon request, copies, at EPA's expense, of all documents and information within its possession or control or that of its contractors or agents relating to past and future activities at the Site or to the implementation of this Consent Decree, 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.

35. Confidential Business Information and Privileged Documents.

a. Each Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted by that Settling Defendant 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 EPA pursuant to applicable law 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 EPA, or if EPA has notified the 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 the Settling Defendant.

b. Each Settling Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide Plaintiff with the following: (i) the title of the document, record, or information; (ii) the date of the document, record, or information; (iii) the name and title of the author of the document, record, or information; (iv) the name and title of each addressee and recipient; (v) a description of the subject of the document, record, or information; and (vi) the privilege asserted. However, no documents, reports or other information created 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, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. The Settling Defendant shall retain all records and documents that it claims 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.

36. 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 information evidencing environmental conditions at or around the Site.

XIV. RETENTION OF RECORDS

37. Until 7 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records and documents 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.

38. After the conclusion of the document retention period in the preceding paragraph, each Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or DOJ, the Settling Defendant shall deliver any such records or documents to EPA. Each Settling Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Defendant assert such a privilege, they shall provide Plaintiff with the following: (a) the title of the document, record, or information; (b) the date of the document,

record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted. However, no documents, reports, or other 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, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. A Settling Defendant shall retain all records and documents that it claims 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.

XV. CERTIFICATIONS

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

a. Conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to the United States, all 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 records, documents or other 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).

40. Certification of Financial Information: The covenant not to sue granted to the Settling Defendants by the United States is expressly contingent upon the completeness, accuracy, and truthfulness of the financial information provided by the Settling Defendants to the United States. By signing this Consent Decree, each Settling Defendant individually certifies that it has provided to the United States complete, accurate, and truthful information about its respective financial condition, with the intention that the United States rely upon this information, and that there has been no material improvement in the Settling Defendant's financial condition between the time the

information was submitted to the United States and the time the Settling Defendant signs this Consent Decree.

XVI. NOTICES AND SUBMISSIONS

41. 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, EPA, DOJ, the Natural Resource Trustee, and each Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ #90-11-3-855)
P.O. Box 7611 - Ben Franklin Station
Washington, D.C. 20044-7611

As to EPA:

Barbara L. Peterson
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
726 Minnesota Ave.
Kansas City, Kansas 66101

As to the Natural Resource Trustee:

Richard C. Nelson
Rock Island Field Office
U.S. Fish and Wildlife Service
4469 48th Ave. Court
Rock Island, Illinois 61201

As to Foxley:

Phillip A. Chambers
General Counsel
Foxley Cattle Co.
P.O. Box 1843
Grand Junction, Colorado 81502

As to Andrew M. Hain:

Andrew M. Hain
P.O. Box 6452
Wyomissing, PA 19610

with a copy to:

Bernard A. Labuskes, Jr.
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

XVII. RETENTION OF JURISDICTION

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

XVIII. INTEGRATION/APPENDICES

43. This Consent Decree and its appendices 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 appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site; "Appendix B" is the Groundwater Sampling and Analysis Plan; "Appendix C" is the Agreement to Allow Entry to Premises for Environmental Response Action between EPA and U.S. Tanning Company.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

44. This Consent Decree shall be lodged with the Court for a period of not less than 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 Defendants consent to the entry of this Consent Decree without further notice.

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

XX. EFFECTIVE DATE

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

XXI. SIGNATORIES/SERVICE

47. The undersigned representatives of each Settling Defendant to this Consent Decree and the Assistant Attorney General of the 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.

48. Settling Defendants hereby agree 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 Settling Defendants in writing that it no longer supports entry of the Consent Decree.

49. Each 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 that Party with respect to all matters arising under or relating to this Consent Decree. Each 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.

SO ORDERED THIS _____ DAY OF _____, 19__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Foxley Cattle Co. et al., (N.D. Iowa) relating to the Mid-America Tanning Company Superfund Site in Woodbury County, Iowa.

FOR THE UNITED STATES OF AMERICA

Date: _____

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Michael N. Romita
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611 - Ben Franklin Sta.
Washington, DC 20044-7611

Steven J. Rapp
United States Attorney
Northern District of Iowa

Donna K. Webb
Assistant U.S. Attorney
Northern District of Iowa
P.O. Box 3629
Sioux City, IA 51102

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Foxley Cattle Co., et al., (N.D. Iowa) relating to the Mid-America Tanning Company Superfund Site in Woodbury County, Iowa.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: _____

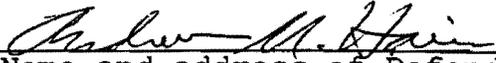
Dennis Grams, P.E.
Regional Administrator
U.S. EPA - Region VII

Barbara L. Peterson
Senior Assistant Regional Counsel
U.S. EPA - Region VII

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Foxley Cattle Co., et al., (N.D. Iowa) relating to the Mid-America Tanning Company Superfund Site in Woodbury County, Iowa.

FOR DEFENDANT ANDREW M. HAIN

Date: February 10, 1998



[Name and address of Defendant's signatory]

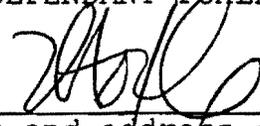
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: ANDREW M. HAIN
Title: _____
Address: PO BOX 6452, WYOMISSING, PA 19610

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Foxley Cattle Co. et al., (N.D. Iowa) relating to the Mid-America Tanning Company Superfund Site in Woodbury County, Iowa.

FOR DEFENDANT ~~FOXLEY~~ CATTLE CO.

Date: Feb 9, 1998

BY:  W.C. Foxley, President

[Name and address of Defendant's signatory]

7480 La Jolla Blvd
La Jolla CA 92037

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Margaret V. Fee, Registered Agent

Title: Corporate Secretary

Address: P.O. Box 582 (80160)

5716 South Bemis
Littleton CO 80120