

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR MUSCATINE COUNTY

LAURIE FREEMAN, SHARON MOCKMORE,
BECCY BOYSEL, GARY D. BOYSEL, LINDA L.
GOREHAM, GARY R. GOREHAM, KELCEY
BRACKETT and BOBBIE LYNN WEATHERMAN,

Plaintiffs,

v.

GRAIN PROCESSING CORPORATION,

Defendant.

Case No. LACV 021232

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

IMPORTANT LEGAL NOTICE

TO: Persons who live or have lived--as Owners, Renters, or Dependents of Owners or Renters--at properties in the Class Area shown on the map (Map-1) below at any time from April 24, 2007 to September 1, 2017, and did not opt out of this Class Action in 2017.

PLEASE READ THIS NOTICE CAREFULLY TO FIND OUT HOW THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS

1. WHY AM I RECEIVING THIS NOTICE?

You are receiving this notice because our records show that you may be covered by a proposed class action settlement. Please read carefully to find out more information.

2. WHAT IS THE CLASS ACTION LAWSUIT ABOUT?

The Class Action was brought in 2012 by eight Muscatine residents ("the Plaintiffs") in this Court (the Iowa District Court for Muscatine County). The Plaintiffs claimed that smoke, odor, and haze emitted from the Grain Processing Corporation ("GPC") Plant caused a nuisance in the Class Area surrounding the plant. They claimed money damages for nuisance, negligence, and trespass for themselves and neighbors within the boundary shown on the Class Area Map.

GPC denies it did anything wrong.

The Court granted class certification in October of 2015. In May 2017, the Iowa Supreme Court affirmed the class certification. The Class Area certified by the Court is shown on the Class Area Map enclosed with this notice as Map-1.

A court-approved notice issued in 2017, informing Class Members about the class certification, explaining how the class action might affect their rights, and giving them an opportunity to opt out if they wished to do so. The parties continued to move ahead to prepare the case for a July 2018 trial. However, in April 2018, the Court directed the parties to mediation to attempt settlement in mediation and, in late June 2018, the Court determined that enough progress had been made to warrant putting off the trial to facilitate the parties' attempts to negotiate the settlement details. That negotiation took several months, but on October 8, 2018, the Parties filed a final agreement on the Proposed Class Action Settlement.

This Notice explains the Settlement, how it would affect the Class if approved by the Court, and how Class Members can make claims for payment and/or voice any objections if they believe it is unfair. The Court has scheduled a hearing for **February 5, 2019 at 10:00 a.m., at the Muscatine Community School District Administration Center, 2900 Mulberry Avenue, Muscatine, Iowa** (Fairness Hearing) on whether final approval of the Settlement should be granted.

3. AM I COVERED BY THE PROPOSED SETTLEMENT—CAN I MAKE A CLAIM FOR PAYMENT?

A. You are covered by the Settlement, and eligible to claim a Settlement payment, if:

- (1) You *lived* at a property in the Class Area for any period between April 24, 2007, and September 1, 2017; *and*
- (2) You were either a *renter* or *owner* of the property, or a *dependent* of the property's renter or owner during that time period; *and*
- (3) You are *not* employed by GPC with a job title of Manager, Director, Vice President, Senior Vice President or President; *and*
- (4) You did *not* opt out of the class action in 2017. Opt-outs include any minor child for whom no Legal Guardian remains a Class Member

You "lived" at a property or properties if you physically resided there.

You were an "owner" if you had either legal or equitable title to the property.

You were a “renter” if you paid money or provided other value (for example, services, home furnishings or other things of value to the household) in exchange for the right to live at the property.

You were a “dependent” if you (1) were without financial means to live independently; (2) depended on an Owner or Renter for financial support; and (3) Physically Resided with the Owner or Renter at the Eligible Residence (as his or her principal residence) during the Class Period. You are presumed to be a dependent if you lived with an Owner or Renter and were a child, grandchild, parent, grandparent, or spouse of the Owner or Renter.

B. You are *not* covered by the Class Action, and therefore *not* eligible to claim damages under the Settlement, if:

- (1) You were solely a guest at the property, or
- (2) You never physically resided at the property (even if you owned or rented it), or
- (3) You are employed by GPC with a job title of Manager, Director, Vice President, Senior Vice President or President; or
- (4) You opted out of the Class Action in 2017. “Opt-outs” include any minor child whose parent(s) or other legal guardian(s) opted out of the class action in 2017 and for whom no parent or legal guardian remains a Class Member.

4. WHAT DOES THE SETTLEMENT REQUIRE?

The Settlement Agreement, if it is approved by the Court, will require GPC:

- (1) To deposit \$45 million into a Settlement Fund to (1) make payments to eligible Claimants in amounts determined by formula, (2) pay the expenses of Settlement Administration, (3) pay court-approved Attorneys’ Fees and Expenses, and (4) pay court-approved Enhancement Payments to certain Class Members in recognition of their contribution to the Class Action; and in addition;
- (2) To install, within eighteen (18) months after the Settlement goes into effect, a regenerative thermal oxidizer (RTO) at the Plant’s new Dryer House 5 to reduce emissions and odor, with an estimated cost of \$1.5 million.
- (3) To install, within five (5) years after the Settlement goes into effect, additional pollution controls at the Plant—at a cost of no less than \$5 million—to reduce Plant emissions and odor for Class Area residents.

In exchange for these commitments from GPC, the Settlement would release GPC from liability for claims arising from harms from air pollution from the Plant on or before the Settlement Effective Date. It also releases GPC from harms for certain (but not all) claims arising during a fixed period of years after the Effective Date. More detailed information on the release is provided below in Section 13.

The full Settlement documents can be found at www.GPCclassaction.com or requested by phone at **1-888-952-9083**.

5. HOW DO I CLAIM A PAYMENT UNDER THE SETTLEMENT?

If you are a Class Member, you may claim a payment under the Settlement by completing the multi-page Claim Form attached to this Notice and returning it to the Settlement Administrator no later than **March 19, 2019 by U.S. mail (postmarked by the deadline date)**.

Each individual Class Member in your household (that is, each Owner, Renter, or Dependent as explained in Section 3) is eligible to claim his/her own payment and, in order to do so, must submit his/her own Claim Form. (In other words, if two eligible adults and three dependent children lived in your home, each of them would be entitled to claim payment under the Settlement, but five separate Claim Forms would need to be submitted.)

If you are a minor dependent of an Owner or Renter, or otherwise incapable of submitting a claim for yourself, the Claim Form explains how your parents or other legal guardians may do so on your behalf. If you are the legal representative of a Class Member who is deceased, the Claim Form explains how you may make a claim on behalf of that Class Member’s estate. If a Claimant has more than one legal guardian, both must sign the Claim Form directing the Settlement Administrator where to send the Claimant’s payment. Otherwise (if all of the Claimant’s legal guardians do not sign the Claim Form), the Court will have to appoint a Guardian ad Litem (to be paid out of the Claimant’s Settlement payment) to determine where the payment should be mailed.

The Claim Form is comprehensive. The information the Claim Form requires is necessary for the Settlement Administrator to verify your eligibility and ensure that the Settlement Funds are distributed only to eligible Class Members. *Please therefore read the Claim Form, and respond to the questions it asks, carefully and completely.*

If you have questions about the Form, you may call the Settlement Administrator at **1-888-952-9083**. If you need assistance in person, you may schedule an in-person appointment with a member of Class Counsel’s team at Larew Law Office at 210 Cedar Street in Muscatine by calling **(563) 263-2120**. You may also contact Class Counsel at www.GPCClassaction.com.

The deadline for mailing your Claim is March 19, 2019. Please **DO NOT** wait until the last minute to get started. It could take you some time to gather the necessary information. *Start early.* If you submit a claim form after the deadline, you will not receive any monetary award.

6. HOW WILL MY CLAIM BE REVIEWED AND VERIFIED FOR PAYMENT?

As long as your Claim Form is submitted (and postmarked) by the **March 19, 2019** deadline, the Settlement Administrator will review it, and the documentation you provide, to determine whether you have established your eligibility for payment: that is, (1) whether you lived in one or more Class Area properties, (2) if you did, whether you were either an Owner, a Renter, or the Owner's or Renter's Dependent, and (3) if so, how long you lived there.

If it appears from your Claim Form that you may be eligible for payment, but information or documentation necessary to support your claim is missing, then the Settlement Administrator will notify you and give you time to provide it. However, once this time has passed, if you have not answered all applicable questions and provided the documents requested, your Claim will be denied either in whole or in part.

If you do not provide sufficient evidence or your Claim Form demonstrates that you are *not* a Class Member—for example, that you never lived in the Class Area as an Owner, Renter, or Dependent, or did not live there during the relevant time period, or opted out of the Class Action in 2017—then your Claim will be denied. The Settlement Administrator may also determine that you are only entitled to a payment for a portion of the time you claimed.

The Settlement Administrator will send you a Notice of Eligibility informing you of its determinations (that is, whether you are or are not an eligible Class Member; and if you are, where you lived and the dates the documentation shows you lived there) and the reasons for each such determination.

7. WHAT CAN I DO IF I BELIEVE THE SETTLEMENT ADMINISTRATOR MADE AN ERROR?

If you believe the Settlement Administrator's determinations are erroneous, you will have an opportunity to submit a statement of appeal to the Appeals Adjudicator. The Appeals Adjudicator will review your statement of appeal based on the file of materials considered by the Settlement Administrator to determine whether an error was made in the processing of your Claim.

The Appeals Adjudicator will *not* have authority to consider new information or documentation that was requested but not previously submitted. *So please be sure to submit all of the requested information and documentation to the Settlement Administrator when you file your claim.*

8. WHEN WILL I KNOW THE EXACT VALUE OF MY CLAIM?

For several reasons, it is not possible now to calculate the exact value of your Claim.

One reason is that Class Member payments will be made from the Settlement Fund after court-approved attorneys' fees, litigation costs, enhancement payments and the costs of administering the settlement have been paid or allocated for payment. The Court will not determine the fees, expenses, and enhancements until after the Fairness Hearing. Another is that the costs of settlement administration, which depend in large part on how many claims are submitted and/or appealed, cannot be fixed until after the claims and appeal periods close. A third reason is that each Claimant's final payment amount will depend on the number and relative value of Claims filed and verified by the Settlement Administrator or Appeal Adjudicator as valid. This cannot be known, either, until after the claims and appeals process is completed.

At the same time, the process for calculating each Claimant's payment has been set and reasonable estimates can be given. Each successful Claimant's payment will be determined, by a formula, as a share of the Settlement Fund based on (1) the level of modeled air pollution at the Class Member's property, and (2) how long the Class Member lived there.

Once the Claims deadline is past, all Claims determinations have been made and all Appeals have been resolved (as described above), the Settlement Administrator will be able to calculate base payments for each Claimant. It will then add the base payment amounts of all validated Claims together to compare the total to the funds available for distribution. If the total of these base payments is *greater* than the available funds, then the payouts to successful Claimants will be proportionately reduced. If the total is *less*, then any excess funds will be allocated as follows:

- The first \$2 million will be allocated to a Community Fund to be used for the benefit of the area surrounding the GPC Plant. The Community Fund will be managed by a committee made up of up to six (6) volunteer representatives—half appointed by GPC, half by the Plaintiffs. The committee will work together to best determine how to spend any money in the Community Fund.
- If any funds remain after the \$2 million allocated to the Community Fund, half of the remainder will be allocated to increase the payouts to successful Claimants pro rata, and the other half will be allocated for return to GPC.

An Estimated Ranges Map is enclosed with this Notice (Map-2) to give you an idea of the range of estimated payments in your area. The estimated ranges assume residency at the properties for the entire damages period from April 24, 2007 through December 31, 2017. For example, the estimated payment range for Claimants who lived in the areas with the highest modeled concentrations of pollutants is \$12,000 to \$16,000 per individual. The estimated payment range for

Claimants who lived in properties with mid-level modeled concentrations of pollutants is \$6,000 to \$8,000 per individual. The estimated payment range for Claimants who lived in the areas with the lowest modeled concentrations of pollutants is from \$2,000 to \$4,000. You can find the estimated ranges for your location on the Map.

Remember, these ranges assume that you lived at the Class Area Property for the entire damages period. If you lived in the Class Area for less than the entire period, your estimated range will be proportionate to the percentage of the period you lived there. For example, if you lived in a Class Area property for half the Damages Period, your estimated payment range would be roughly half of the range shown on the map. If you lived at more than one Class Area property at different times, your claim for the two properties will be calculated separately and then added together.

Note that the estimated ranges are *net* of any court-approved attorneys' fees and expenses, enhancement payments, and the costs of administering the settlement. In other words, they reflect estimates of payments that will be paid directly to eligible Claimants without any attorneys' fees, costs or other expenses deducted from those payments.

Payments will be mailed at the end of the eligibility review and appeal period by check made out to each Claimant. If you receive a check, please make sure to cash it promptly. **Claim checks not cashed after 180 days will be voided and allocated to the Community Fund.**

9. HOW WILL CLASS COUNSELS' ATTORNEYS' FEES AND EXPENSES BE SET?

Class Counsel's attorneys' fees and litigation expenses will be paid from the \$45 million Settlement Fund in amounts approved by the Court. Class Counsel (Miner Barnhill & Galland, P.C. and Larew Law Office) have litigated this case on behalf of the Class on "contingency." Under the contingency arrangement, Class Counsel would receive no compensation (or reimbursement of advanced out-of-pocket expenses) unless and until the Class Claims were resolved successfully, either by settlement or trial and their Attorneys' Fees and Expenses were approved by the Court as fair and reasonable.

Since 2012, Class Counsel have paid out-of-pocket roughly \$1.7 million for the expert witness and consultant fees, deposition transcripts, document management, necessary travel, and disbursements that the litigation required; and they have spent more than 35,000 hours pursuing the class action on your behalf. To date, they have not been reimbursed for any of these expenses or paid for any of these hours.

The Settlement requires Class Counsel to apply to the Court to approve both their expenses and their fees. Before the Fairness Hearing, Class Counsel will therefore ask the Court to approve (1) reimbursement of the full amount of their expenses from the Settlement Fund, and (2) a percentage fee. Specifically, as compensation for their hours worked, Class Counsel intend to request a fee limited to 25% of the benefits the Settlement achieves for the Class (the \$45 million Settlement Fund plus the \$1.5 million to be spent on the Dryer House 5 RTO plus the \$5 million to be spent on Additional Pollution Control Projects), or \$12.875 million. The requested fees and expenses will be fully documented to the Court. No fee will be paid or expenses reimbursed from the Settlement Fund without Court approval.

10. WHAT ARE "ENHANCEMENT AWARDS," AND WHO WILL GET THEM IF THE COURT APPROVES?

The Court will also consider whether to approve Enhancement Awards from the Settlement Fund for the Named Plaintiffs and for certain Class Members in recognition of their significant contribution in support of the Class Action claims. Class Counsel intend to request payments of \$25,000 for each of the eight Representative Plaintiffs; and \$7,000 for each of thirty-seven (37) Class Members who served as witnesses (and in many cases opened their homes to inspection) on behalf of the Class. The Settlement Agreement (posted at www.GPCClassaction.com) lists the proposed recipients of these awards.

No Enhancement Awards will be paid from the Settlement Fund without the Court's approval.

11. WHAT ELSE DOES THE SETTLEMENT REQUIRE GPC TO DO?

In addition to requiring payment of \$45 million to the Settlement Fund, and requiring GPC to install the pollution controls described in Section 4 at a cost of roughly **\$1.5 million** for the Dryer House 5 RTO and no less than **\$5 million** on additional pollution controls to reduce emission, the Settlement also requires GPC to:

- Engage an independent auditor to perform an audit of fugitive air emissions and recommend appropriate measures to reduce them;
- Establish and maintain a telephone "hotline" that will allow community members to identify concerns or complaints regarding potential community impacts of activities at the GPC Plant, and
- Establish and maintain a website or second page on its corporate website that will inform the public of the hotline, provide a way to identify concerns or complaints online, and provide updates on ongoing pollution reduction efforts or other significant changes at the GPC Plant.

12. WHAT CLAIMS WILL BE RELEASED IF THE SETTLEMENT IS APPROVED BY THE COURT?

If the Court approves this Settlement, the Settlement will be legally binding on all Class Members, whether they submit a Claim for payment or not (or objected or not). As part of the settlement, GPC and related persons and entities will be released from liability from all known and unknown claims that arose on or before the Settlement Effective Date based on air emissions (including odor) from the Plant. This release will continue during the five (5) year period following the date the Settlement goes into effect *EXCEPT NOT* for claims: (1) for harms from an unexpected and unintended sudden release of contaminants to the environment posing a significant threat to human health or the environment, or (2) for harms from diagnosable personal injuries claimed to have been caused by post-effective date actions by GPC, or (3) for harms resulting from post-effective date actions of GPC arising from substantially different or substantially greater air emissions, releases, or odors than current operations; and (4) for statutory violations brought pursuant to a citizen suit provision relating to GPC's actions after the effective date.

If GPC complies with the affirmative relief obligations regarding installation of the RTO on Dryer House 5 and timely completion of the Additional Pollution Control Projects, the Settlement will release the same set of claims (limited by the same four exceptions as stated above) from the end of the fifth year through and including the end of the twelfth year following the date the Settlement goes into effect.

13. WHEN WILL THE SETTLEMENT GO INTO EFFECT?

The Settlement will go into effect the day after the expiration of the deadline for appeal, writs, petitions, or motions for rehearing or certiorari regarding the Final Approval Order without the initiation of any such proceeding. Or if such proceeding has been initiated, the Settlement will go into effect on the day after the full and final disposition of any such proceeding including any proceedings in remand and/or subsequent appeal and the Court's order approving the Settlement Agreement has been affirmed, or any such appeal is dismissed or withdrawn with no further right of appeal.

14. HOW DOES THIS SETTLEMENT RELATE TO THE SETTLEMENT OFFERED BY GPC TO CLASS AREA RESIDENTS WHO OPTED OUT OF THE CLASS ACTION LAST YEAR?

This class action Settlement is entirely separate. It covers only Class Area residents who chose *not* to opt out. As noted, Class Area residents who chose to opt out of the class action last year are not eligible for any payment from the Settlement Fund. Also, unlike the settlement offered by GPC in 2017 (under which payments were made per household, not per individual), this Class Action Settlement provides for equal Settlement Payments to every individual Class Member, including owners, renters, and dependents as these terms are explained in Section 3 of this Notice. And unlike the individuals who opted-out of the Class Action last year to take the settlement offered by GPC, *no* Class Members who remained in the Class Action, and who are therefore covered by this Settlement, will be required to give GPC any permanent easement on their properties or to Release all claims against GPC in perpetuity (that is, until the end of time).

15. DOES CLASS COUNSEL BELIEVE THIS SETTLEMENT IS IN THE BEST INTERESTS OF THE CLASS? AND WHAT ALTERNATIVES TO THIS SETTLEMENT WERE CONSIDERED?

Class Counsel have negotiated this Settlement at arms-length, and they recommend it whole-heartedly as an excellent result for the Class and the Community. In exchange for the Releases described above, it provides both substantial, individualized monetary relief and millions to be spent on Additional Pollution Control Projects, with penalty provisions for non-performance.

The alternative to this Settlement would be a trial on the merits to a jury with an uncertain outcome. And even a verdict in Plaintiffs' favor would be followed by a contested claims process, with opportunities for appeal.

In Class Counsel's judgment, these benefits, considering the risks, difficulties, delays, and resulting uncertainties attendant on continued litigation and trial, and the desirability, for all Class Members of GPC's commitments to undertake the Additional Pollution Control Projects this Settlement requires, make this Settlement a strong, positive outcome for the Class, consistent with Plaintiffs' original intent when they filed the lawsuit in 2012.

16. WHAT WILL HAPPEN IF THE SETTLEMENT IS NOT APPROVED BY THE COURT?

If the Settlement is not approved by the Court as fair, adequate and reasonable, the Settlement Agreement will be null and void, and all Parties will return to their respective pre-Settlement status and the Class Action will be set for trial. Other than its having rejecting GPC's prescriptive easement defense in May 2018, the Court has not ruled on the merits of the claims or defenses in this case. GPC has denied and continues to deny the Plaintiffs' claims.

17. WHAT CAN I DO IF I BELIEVE THE SETTLEMENT TERMS ARE UNFAIR?

The Court will hold a hearing on the Settlement (Fairness Hearing) at the Muscatine Community School District Administration Center, 2900 Mulberry Avenue in Muscatine, Iowa, on February 5, 2019 at 10:00 a.m. to determine whether the terms of the Settlement are fair, adequate and reasonable; whether Class Counsel are entitled to the attorneys' fees and expenses they have requested; whether the additional Enhancement Awards should be approved; and whether the Final Approval Order and Judgment should be entered dismissing the Class Action with prejudice and approving the Settlement.

If (and only if) you are a Class Member, and whether or not you make a claim for payment, you have a right to file an objection to the Settlement if you believe it is unfair.

If you wish to object, your objection must be submitted to the Muscatine County Courthouse at 401 East Third Street, Muscatine, Iowa, in writing, no later than **January 3, 2019**. It must include a detailed statement of the objection and the specific reasons for it, including any evidence and legal authority you wish to bring to the Court's attention. It must also contain your printed name, address, telephone number (or those of your Authorized Representative if applicable). It must provide information establishing your standing as a current Class Member (that is, provide the proofs of class membership as Owner, Renter or Dependent required in the Claim Form). If the objection is made on your behalf by an Authorized Representative, it must also provide information establishing the authority of such Authorized Representative to act on your behalf. If you retain an attorney (which you may do at your expense), the Attorney must: (a) file a notice of appearance with the Court by **January 24, 2019**; (b) file a sworn declaration attesting to his or her representation of you in regard to the filing of the objection on your behalf; and (c) satisfy (on your behalf) all substantive requirements for objection described herein.

You are not required to appear at the Fairness Hearing in person, but if you wish to do so (or wish to appear through an Authorized Representative or attorney representing you), then you must file a written notice of intent to appear with the Court by **January 24, 2019**.

These objection requirements are important. If you do not comply with them, you will give up the right to object to the Settlement, to appear and be heard on any such objection at the Fairness Hearing, and the right to appeal from the Court's disposition of the Settlement.

If the Court grants final approval of the Settlement, you will be bound by the Settlement, whether or not you have made any claim for payment, and even if you submitted an objection to the Settlement's terms.

18. HOW DO I GET FURTHER INFORMATION?

If you have any questions, including questions about whether your property is included in the Class Area for Settlement, or want to review any document that has been filed in this case, you may contact the Class Action Counsel at www.GPCClassAction.com, or by mail, email, or phone as follows:

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Miner, Barnhill & Galland, P.C.
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Claire.Diallo@LarewLawOffice.com

In addition to the Class Area map attached to this Notice, you can find close-up maps on the website (www.GPCClassAction.com) showing which properties at the class boundaries are included in the class.

The Settlement Agreement can be found on the Court website and at www.GPCclassaction.com.

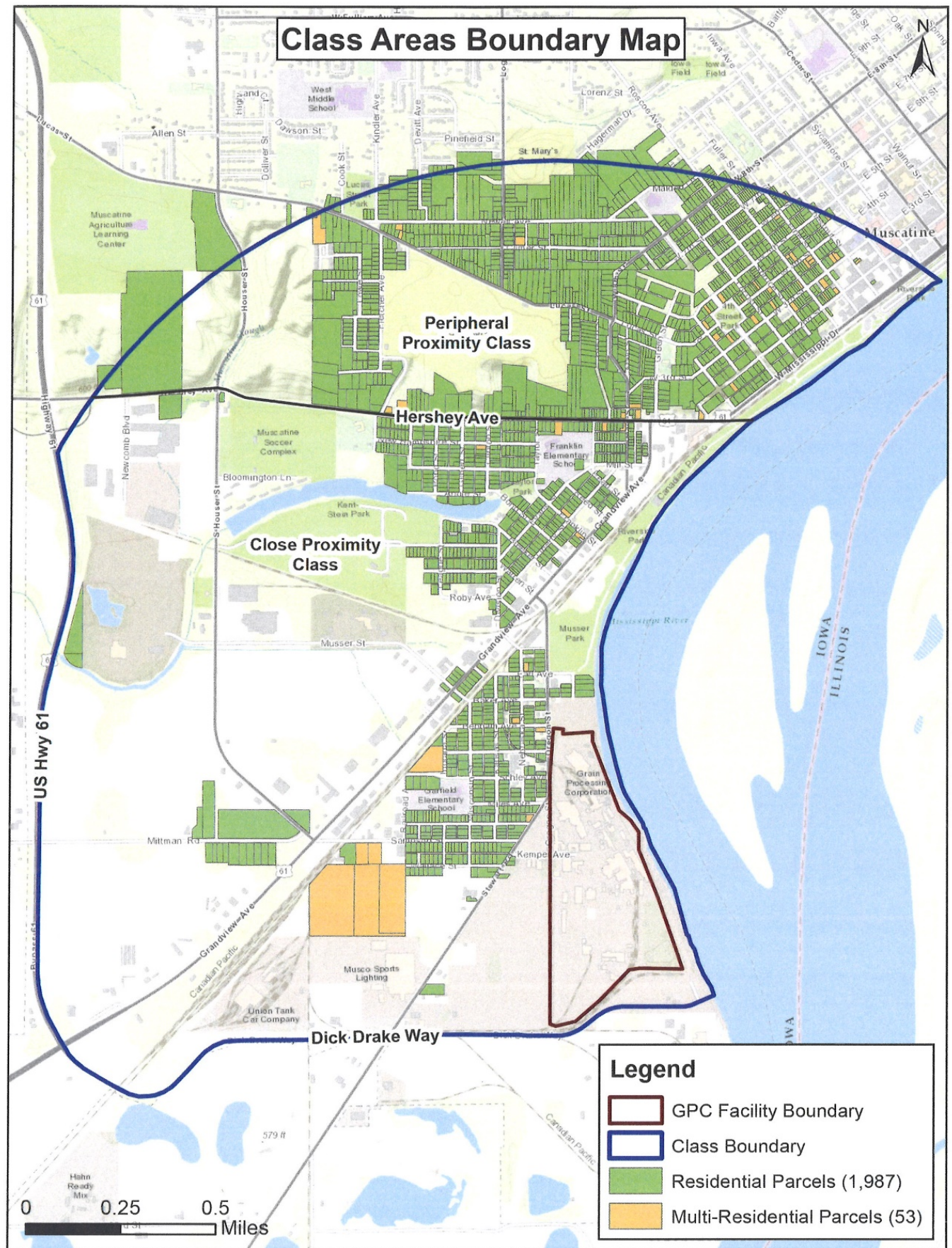
Please do not contact the Judge, the Clerk of Court, or Grain Processing Corporation, or their attorneys, with questions.

Dated: November 19, 2018.

BY ORDER OF THE COURT:

John D. Telleen, District Court Judge

MAP-1



MAP-2

