

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 17TH JUDICIAL CIRCUIT
KENT COUNTY

ATTORNEY GENERAL DANA NESSEL, on
behalf of the People of the State of Michigan,
and the STATE OF MICHIGAN,

Plaintiffs,

v

FKI HARDWARE, INC., f/k/a HICKORY
HARDWARE, INC., f/k/a BELWITH
INTERNATIONAL, LTD., f/k/a KEELER
BRASS COMPANY,

Defendant.

09032

No. 2022-_____-CE

HON. _____

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There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint. MCR 2.113(A); MCR 1.109(D)(2)(a)(i).

COMPLAINT

Plaintiffs Attorney General Dana Nessel, on behalf of the People of the State of Michigan, and the State of Michigan (collectively the State), for their Complaint against Defendant FKI Hardware, Inc. state as follows:

NATURE OF THE CASE

1. This is a civil action for declaratory and injunctive relief, including costs and fees, under the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.101 *et seq.*, to compel compliance with Part 201, Environmental Remediation, MCL 324.20101 *et seq.*, of the NREPA, and for natural resource damages under Part 201. The Plaintiffs seek to compel compliance with Part 201, including but not limited to, response actions necessary to address the hazardous substances released by Defendant and provision of information requested by Plaintiffs. Plaintiffs further seek to recover damages for injury to, loss of, or destruction of natural resources resulting from releases of hazardous substances from facilities owned or operated by Defendant.

2. The State alleges that Defendant FKI Hardware, Inc., successor to the former Keeler Brass Company, is responsible for the release or threat of release of hazardous substances that resulted in detections of trichloroethylene (TCE), per- and polyfluoroalkyl substances (PFAS), volatile organic compounds (VOCs), and/or metals at levels that exceed applicable Michigan cleanup criteria at multiple sites in Michigan:

- 945 and 955 Godfrey Avenue SW, Grand Rapids, Michigan 49503 property (Godfrey Property);
- 2929 32nd Street SE, Kentwood, Michigan 49512 property (32nd Street Property);
- 835 Hall Street SW, Grand Rapids, Michigan 49503 property (Hall Street Property);
- 236 Stevens Street SW, Grand Rapids, Michigan 49507 property (Stevens Street Property);

- 311 N. Centennial Street, Zeeland, Michigan 49464 property (Zeeland Property);
- 39 State Street, Middleville, Michigan 49333 (State Street Property); and
- 4300 Ferry Street SW, Grandville, Michigan 49418 property (Grandville Property) (also in EGLE records as 3100 Broadway Avenue).

3. The State alleges that Defendant FKI Hardware, Inc., successor to the former Keeler Brass Company, is responsible for suspected releases of contamination that are expected to exceed applicable Michigan cleanup criteria based on Defendant's past operations at the facilities at two additional properties in Michigan:

- 609 Tupper Lake Street, Lake Odessa, Michigan 48849 property (Lake Odessa Property) (also in EGLE records as 1315 Hancock Street); and
- 157 W. Beech Street NE, Cedar Springs, Michigan 49319 property (Cedar Springs Property).

4. These nine properties are collectively referenced herein as "the Properties."

5. The State alleges that an imminent and substantial endangerment to human health and the environment exists at and emanating from the Godfrey Property from releases of TCE that resulted in levels of TCE above applicable Michigan cleanup criteria for volatilization to indoor air, including at levels demonstrated to present acute negative health risks to occupants of buildings overlying or near the contamination from breathing in contamination that enters the indoor air spaces (volatilizes) from underground contamination.

6. The State seeks injunctive and declaratory relief and seeks to recover natural resource damages and response activity costs lawfully incurred by the Michigan Department of Environment, Great Lakes, and Energy (EGLE)¹ in responding to releases of contamination at and emanating from the Properties.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to MCL 600.605.

8. Venue is appropriate in this Court pursuant to MCL 600.1627 because the causes of action arose in Kent County.

PARTIES

9. Plaintiffs Attorney General Dana Nessel, on behalf of the People of the State of Michigan, and the State of Michigan, have the authority to bring an action to enforce Part 201 of the NREPA, MCL 324.20101 *et seq.* MCL 324.20126a(6), MCL 324.20137(1). EGLE is a department within the State of Michigan responsible for the overall management and protection of the environmental safety and health of Michigan residents.

10. Defendant FKI Hardware, Inc. (FKI Hardware), is a California corporation with its principal place of business in Tulsa, Oklahoma. Jurisdiction over FKI Hardware is appropriate in this Court pursuant to MCL 600.715(1)

¹ EGLE is the successor agency to the former Michigan Department of Environmental Quality (MDEQ).

because FKI Hardware operated its business in Michigan until approximately 2016, which forms the basis of the transactions and occurrences that give rise to this Complaint.

11. Defendant FKI Hardware is successor to the former Keeler Brass Company through a merger and has changed its name on multiple occasions. Based on Michigan Department of Licensing and Regulatory Affairs (LARA) records, the Keeler Brass Company merged with Belwith International, LTD. on April 1, 2006, with Belwith International, LTD. as the surviving entity. LARA records show Keeler Brass Company ceasing to exist on this date. LARA records further show that Belwith International, LTD. changed its name to Hickory Hardware, Inc. on April 5, 2006. The State of California's Secretary of State records then show that Hickory Hardware changed its name to FKI Hardware, Inc. on April 1, 2009.² The term "Defendant" throughout this Complaint refers to FKI Hardware or any of its prior iterations, including Keeler Brass Company, Belwith International, LTD., and Hickory Hardware, Inc.

12. Defendant FKI Hardware is a "person" within the meaning of the NREPA, including Part 201. MCL 324.301(h).

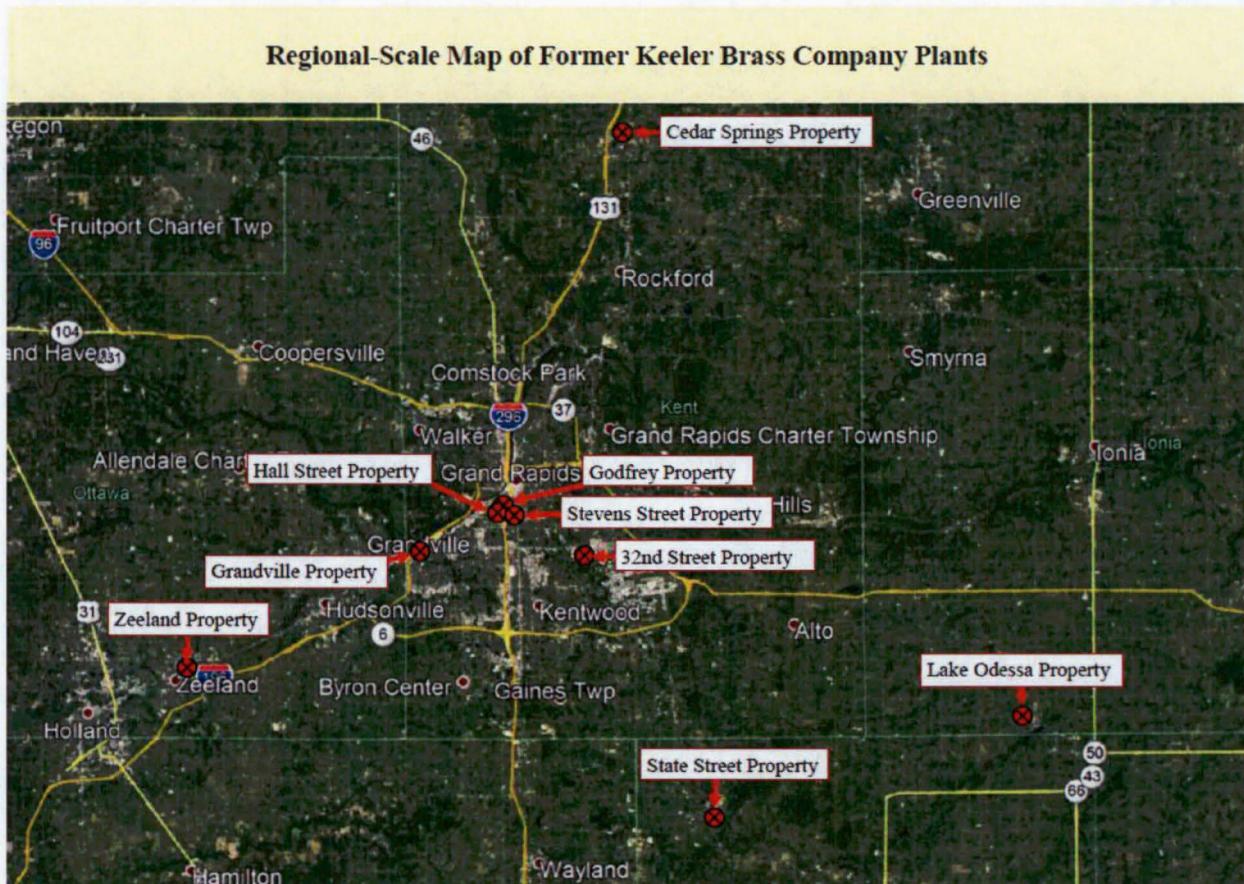
GENERAL ALLEGATIONS

13. Defendant conducted foundry, metal finishing, and plating operations at several locations throughout Southwest Michigan from about 1893 to 2016.

² This name change was reflected in LARA records as of November 8, 2013.

Defendant's operations involved various industrial component operations that used and disposed of hazardous substances, including, but not limited to, electroplating, a brass foundry, degreasing, and manufacturing.

14. The below map shows the location of the Properties:



15. The below map zooms in to show the location of the Properties that are in Grand Rapids and nearby suburbs:

Former Keeler Brass Company Plants in Grand Rapids and Near Suburbs



MICHIGAN'S ENVIRONMENTAL CLEANUP PROGRAM, PART 201

16. Releases and threats of release of hazardous substances, and sites of contamination generally are regulated in Michigan under the NREPA, including Part 201. Part 201 of the NREPA requires that parties liable for releasing contamination into Michigan's environment undertake response activities to evaluate and eliminate unacceptable risks posed by the contamination to public health, safety, or welfare, or to the environment. MCL 324.20102(c) and (g).

17. Part 201 places the responsibility for response activities and for compensating and/or repairing injury, destruction, or loss to natural resources

caused by a release or threat of release on the person or persons liable for that release. MCL 324.20102(e)–(f).

18. Under Part 201, EGLE is authorized to develop generic criteria for hazardous substances, which apply broadly and designate the level of a hazardous substance above which the hazardous substances are defined to pose a risk to human health or the environment. MCL 324.20120a(1); MCL 324.20104(1).

19. In a case where the assumptions underlying the development of the generic criteria are not met, Part 201 requires the development and use of site-specific criteria based on more specific or detailed information for the particular site or circumstances. MCL 324.20120b; see also Mich Admin Code, R 299.14(2) and R 299.24(2).

20. The fact that a hazardous substance is present at levels that exceed criteria or otherwise threaten human health and the environment may not always be, on its own, a violation of Part 201—but the statute places an affirmative responsibility on parties who are liable for the contamination under the law to “diligently pursue” actions to address the hazards. MCL 324.20114(1)(g).

21. Liable parties can undertake their own, voluntary actions to stop unacceptable exposures to the hazardous substances, but if a liable party is not “diligently pursuing” such action, EGLE can take enforcement actions, up to and including legal action by the Department of Attorney General.

MCL 324.20114(1)(g)(i); MCL 324.20114a; MCL 324.20137(1); see also MCL 324.20126a(6). On information and belief, Defendant had reason to believe

that it caused releases of hazardous substances at the Properties, yet failed to notify the State of its releases or diligently pursue cleanup activity as required by MCL 324.20114(1).

PART 201 STANDARDS TO ADDRESS HEALTH RISKS POSED BY PFOA, PFOS, AND TCE

22. Hazardous substances found at the Properties are chemicals known to be part of the processes employed by Defendant and are regulated under Part 201 when there is a release of such substances. Included among these hazardous substances are the group of chemicals known as per- and polyfluoroalkyl substances (PFAS) and the chemical trichloroethylene (TCE).

23. Both PFAS and TCE are widely acknowledged as being used in metal finishing—PFAS as a mist suppressant in the plating process and TCE as a degreasing agent for metal parts.³

24. PFAS is a class of man-made chemicals, which have varying impacts on human health. The toxicity of PFAS has been evaluated in many human and laboratory animal studies. Epidemiological studies suggest associations between PFAS exposure and several health outcomes including pregnancy-induced

³ Interstate Technology Regulatory Council, *PFAS – Per-and Polyfluoroalkyl Substances, 2.6 PFAS Releases to the Environment* (September 2021), § 2.6.1.3, available at <https://pfas-1.itrcweb.org/2-6-pfas-releases-to-the-environment/> (accessed September 27, 2022); US Environmental Protection Agency, *Case Studies on Safer Alternatives for Solvent Degreasing Applications* (September 2016), p 1, available at [https://www.epa.gov/sites/production/files/2017-01/documents/safer_alternatives_for_solvent_degreasing_applications .pdf](https://www.epa.gov/sites/production/files/2017-01/documents/safer_alternatives_for_solvent_degreasing_applications.pdf) (accessed September 27, 2022).

hypertension, increases in serum liver enzymes, increases in serum lipids, decreased antibody response to vaccines, and small decreases in birth weight.⁴

25. Michigan has enforceable criteria for seven types of PFAS: perfluorooctanoic acid (PFOA); perfluorooctanesulfonic acid (PFOS, a/k/a/ perfluorooctane sulfonate); perfluorononanoic acid (PFNA); perfluorohexane sulfonic acid (PFHxS), hexafluoropropylene oxide dimer acid (HFPO-DA) (a GenX compound), perfluorobutane sulfonic acid (PFBS); and perfluorohexanoic acid (PFHxA). The criteria relevant to the Keeler properties pertain to two pathways of exposure: groundwater used as drinking water and, for PFOA and PFOS, the groundwater-surface water interface (GSI).⁵

26. In January 2018, Michigan established criteria for PFOA and PFOS at 70 parts per trillion (ppt) either singly or combined in groundwater used as drinking water. The criteria were developed to address adverse health impacts linked to ingestion of drinking water, including short-term developmental and chronic exposures.⁶

⁴ Agency for Toxic Substances and Disease Registry, *Toxicological Profile for Perfluoroalkyls* (May 2021), p 6, available at <https://www.atsdr.cdc.gov/ToxProfiles/tp200.pdf> (accessed September 27, 2022).

⁵ The GSI is “the location at which groundwater enters surface water.” MCL 324.20120e(23)(c). This criteria is designed to protect surface water, water quality standards. MCL 324.20120e.

⁶ MDEQ, *Establishing PFOA & PFOS Criteria* (January 9, 2018), available at <https://content.govdelivery.com/accounts/MIDEQ/bulletins/1d1db52> (accessed September 27, 2022).

27. Subsequently, the Michigan PFAS Action Response Team's Science Advisory Workgroup reviewed the current science on PFAS and human health and identified health-based values for seven PFAS.⁷ Based on these health-based values, Michigan developed and promulgated Maximum Contaminant Levels, which are state drinking water standards. Those Maximum Contaminant Levels were approved and became effective August 3, 2020.

28. Under the terms of Section 20120a(5) of Part 201, MCL 324.20120a(5), if a federal or state drinking water standard differs from an existing Part 201 groundwater cleanup criterion, the groundwater criterion becomes the more stringent of the two by operation of law. The state drinking water standards for PFOA (8 ppt) and PFOS (16 ppt) effective in August 2020 therefore replaced the previously-established groundwater cleanup criteria of 70 ppt for PFOA and PFOS, singly or combined.

29. Additionally, as of February 2022, Michigan has promulgated enforceable criteria for groundwater used for drinking water for seven types of PFAS: hexafluoropropylene oxide dimer acid (GenX) (370 ppt), perfluorobutane sulfonic acid (PFBS) (ppt), perfluorohexane sulfonic acid (PFHxS) (51 ppt), perfluorohexanoic acid (PFHxA) (400,000 ppt), perfluorononanoic acid (PFNA) (6

⁷ Michigan Science Advisory Workgroup, *Health-Based Drinking Water Value Recommendations for PFAS in Michigan* (2019), available at <https://www.michigan.gov/-/media/Project/Websites/pfasresponse/documents/MPART/Reports/2019-Health-Based-Drinking-Water-Value-Recommendations-PFAS-MI.pdf?rev=0dc919f0d56d44f98d5bb1130a8c8907> (accessed September 27, 2022).

ppt), perfluorooctanoic acid (PFOA) (8 ppt), and perfluorooctanesulfonic acid (PFOS) (16 ppt). Mich Admin Code, R 299.44.

30. EGLE also has PFAS criteria for the GSI. The generic GSI criteria “are the water quality standards for surface waters developed by the EGLE pursuant to [P]art 31,” Water Quality, of the NREPA, MCL 324.3101 *et seq.* MCL 324.20120e(1)(a). EGLE has developed water quality standards under Part 31 for three PFAS: PFOA, PFOS, PFBS.⁸

31. Trichloroethylene, or TCE, is a volatile organic compound (VOC) commonly used for industrial purposes. That TCE is volatile means that it vaporizes from solids or liquids, forming gases that move into the air.

32. TCE is classified as a carcinogen, affecting the liver and kidneys, and also poses risks of adverse noncancer effects on the human central nervous system, the immune system, the endocrine system, and fetal development.⁹

33. Like PFAS, TCE can be ingested through groundwater used as drinking water, but because it is volatile and vaporizes into air, TCE also poses a risk to human health through inhalation.

⁸ Mich Admin Code, R 323.1057; EGLE, *Rule 57 Water Quality Values* https://www.michigan.gov/egle/0,9429,7-135-3313_3681_3686_3728-11383--,00.html (click on “Download Rule 57 Water Quality Values spreadsheet”) (accessed September 27, 2022).

⁹ US Environmental Protection Agency, *Integrated Risk Information System (IRIS) Chemical Assessment Summary: Trichloroethylene; CASRN 79-01-6* https://cfpub.epa.gov/ncea/iris/iris_documents/documents/subst/0199_summary.pdf (accessed September 27, 2022).

34. The volatilization to indoor air pathway (VIAP), which addresses inhalation risks of volatile hazardous substances, is a concern when contaminated soil or groundwater below or near a building is of high enough concentrations that it emits harmful vapors that move into the air inside buildings through cracks, sumps, utilities, or other available pathways.

35. Studies show that TCE can present an acute risk, as defined by state law, when inhaled.¹⁰ An acute risk is one that poses risks of harm as a result of a single or short-term exposure. Mich Admin Code, R 299.1(b) (defining “acute toxicity”).

36. EGLE promulgated generic criteria in 2013 to address the VIAP for contamination in groundwater and soil: Groundwater Volatilization to Indoor Air Inhalation Criteria (GVIIC), Mich Admin Code, R 299.14, and Soil Volatilization to Indoor Air Inhalation Criteria (SVIIC), Mich Admin Code, R 299.24.

¹⁰ *Id.*, p 4; Johnson et al., *Threshold of Trichloroethylene Contamination in Maternal Drinking Waters Affecting Fetal Heart Development in the Rat*, Environmental Health Perspectives (March 2003), p 291; Forand et al., *Adverse Birth Outcomes and Maternal Exposure to Trichloroethylene and Tetrachloroethylene through Soil Vapor Intrusion in New York State*, Environmental Health Perspective (April 2012), p 619; Michigan Toxics Steering Group, *Process to Address Developmental and/or Reproductive Toxicity in the Derivation of Generic Cleanup Criteria* (December 2015), available at https://www.michigan.gov/documents/deq/deq-aqd-tox-dev_rep_tox_cleanup_criteria_618442_7.pdf (accessed September 27, 2022); Michigan Toxics Steering Group Volatilization to Indoor Air Workgroup, *Volatilization to Indoor Air Recommendations for Interim Action Screening Levels and Time-Sensitive Interim Action Screening Levels* (December 2020), p 16, available at [Volatilization to Indoor Air Toxics Steering Group \(TSG\) Vapor Intrusion Workgroup Recommendations for Interim Action Screening Levels and Time Sensitive Interim Action Screening Levels \(michigan.gov\)](#) (accessed September 27, 2022) (hereafter Michigan TSG, *Interim Action Screening Levels.*”).

37. The Part 201 Administrative Rules describe conditions that must exist for the generic vapor inhalation (GVIIC and SVIIC) criteria to apply at a facility. If those conditions are not met, the generic criteria, which were developed to be protective for those assumed conditions, do not apply, because they are not protective, and site-specific criterion must be developed. Mich Admin Code, R 299.14(2), R 299.24(2). Where generic criteria do not apply, Section 20120b of Part 201, MCL 324.20120b, provides a responsible party with a pathway to obtain approval for a site-specific criterion that does fit the conditions at the facility.

38. Applying this concept to the volatilization to indoor air pathway, where risks posed by harmful vapors such as those from TCE are not addressed by the generic GVIIC and SVIIC, Part 201 requires liable parties to address the risk, even though they cannot use the non-applicable generic criteria. MCL 324.20120a(16); Mich Admin Code, R 299.28.

39. Currently, there are no generic criteria provided in Part 201 for what is referred to as "soil gas." Soil gas can be an essential component of determining vapor intrusion risk to occupants of a building. Mich Admin Code, R 299.14(5) (groundwater criteria) and R 299.24(5) (soil criteria). Soil gas concentrations are different from the existing generic criteria (GVIIC and SVIIC) in that they are a direct measure of the concentrations of a hazardous substance in the gas phase near the source and below the building rather than in the contaminated groundwater or soil itself. When developing site-specific criteria, the Part 201 Administrative Rules

specifically allow the development of soil gas criteria to demonstrate compliance with criteria for the VIAP.

40. When developing site-specific criteria, acute exposure concerns must also be considered. Mich Admin Code, R 299.28(1)(e).

41. In cases where the generic GVIIC and SVIIC do not apply, but the VIAP must be addressed, consistent with Section 20114(1)(h) of Part 201, EGLE may develop site-specific criteria for a facility and require the responsible party either use the site-specific criteria developed by EGLE or develop its own site-specific criteria, approvable by EGLE, to implement a work plan for which EGLE has demanded compliance pursuant to Section 20114(1)(h).

42. EGLE regularly assists the regulated community in developing site-specific volatilization to indoor air criteria (SSVIAC) and site-specific target levels (SSTLs) when conditions at a facility mean that the generic criteria cannot be used and, therefore, site-specific criteria must be developed. More than 1,600 sets of SSVIAC and SSTLs have been developed for use at facilities throughout Michigan.

THE GODFREY PROPERTY—OWNERSHIP AND OPERATION

43. From about 1902 to 2007, Defendant operated at the Godfrey Property, including operating a brass foundry, and engaging in plating, manufacturing, and degreasing.

44. The hazardous substances found on the Godfrey Property and emanating from the Property are consistent with the hazardous substances used in those types of operations.

45. The Godfrey Property contained multiple underground storage tanks, above ground storage tanks, pits, and sumps. A 1979 Factory Mutual System map of the Keeler plant identifies the location of a 3,000-gallon above ground storage tank that contained TCE at the Godfrey Property. (Baseline Environmental Assessment B200702146, Appendix F.)

46. Soil samples collected in 2007 from the location of the former above ground storage tank detected a concentration of TCE at 2,300,000 parts per billion (ppb). (Baseline Environmental Assessment B200702146.)

47. A 2007 report documented a spill of TCE (estimated at 100 to 200 gallons) near the Godfrey Property degreasing operation in 2003. (February 16, 2007 Phase I ESA Report conducted by LimnoTech Inc., Hickory Hardware's consultant.)

48. Reports by Defendant show that TCE was still being stored and used on the Property in 2006. (July 10, 2006 Pollution Incident, Contingency & Emergency Procedures Plan for Hickory Hardware Inc./Keeler Brass Company; 2006 Site Reconnaissance Photograph by LimnoTech, included in BEA B200702146).

49. Property records show that in June 2007, Defendant¹¹ sold the Property to Leo Schlesinger Holdings, LLC, which used the property for storage and light manufacturing.

¹¹ At that time known as Hickory Hardware.

50. Leo Schlesinger Holdings, LLC submitted a Baseline Environmental Assessment for the Godfrey Property to EGLE in 2007, which documented existing TCE, other VOCs, metals, and polycyclic aromatic hydrocarbon contamination at the Godfrey Property in soil and/or groundwater in excess of generic soil and groundwater cleanup criteria.

51. Property records show that in 2017, Leo Schlesinger Holdings, LLC, sold the Property to CGFH 955 Godfrey, LLC, the current property owner, which also uses the Property for storage and light manufacturing.¹²

THE GODFREY PROPERTY SITE INVESTIGATION AND MITIGATION ACTIVITIES

52. An indoor air sample collected in 2007 detected TCE at a concentration of 1,100 parts per billion by volume (ppbv) or approximately 6,000 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and confirmed the risks posed by the volatilization of TCE in the subsurface at the 955 Godfrey building. This concentration is hundreds of times above the current Michigan Toxics Steering Group's¹³ non-residential time-sensitive

¹² Both Leo Schlesinger Holdings, LLC and CGFH 955 Godfrey completed and filed Baseline Environmental Assessments (BEA). A person that completes and timely files a BEA is not liable under Part 201 unless that person is responsible for an activity causing a release or threat of release. MCL 324.20126(1).

¹³ The Michigan Toxics Steering Group is an inter-departmental group in Michigan made up of staff from EGLE, the Michigan Department of Health and Human Services, and the Michigan Department of Agriculture that "provide[s] a forum for discussion of human health risk assessment issues related to exposure to chemical contaminants in environmental media." The Toxics Steering Group "facilitate[s] development of consensus recommendations based on sound science" and "foster[s] consistency of risk assessment applications within the EGLE and between state agencies, while minimizing duplication of effort on risk assessment issues." EGLE,

screening level for analyzing risk to human health through indoor air for TCE of 12 $\mu\text{g}/\text{m}^3$.¹⁴

53. Without EGLE's review or approval, Defendant applied a floor sealant in a limited location in the main building on the Godfrey Property site in 2007 following confirmation of the TCE vapor intrusion risks, which may have lowered but did not eliminate the concentration of TCE in the indoor air. A single indoor air sample¹⁵ collected after the floor sealant was applied reflected that for that single sample, the concentration had decreased, but was still above Michigan's Toxic Steering Group's screening level.¹⁶

54. Soil samples collected at the Godfrey Property in 2007, both prior to and after the sale of the property, also continued to show high levels of TCE exceeding criteria, which was documented in submittals to EGLE.

55. Upon acquiring the Godfrey Property in 2017, the current property owner (CGFH 955 Godfrey, LLC), conducted environmental sampling activities. In

Toxics Steering Group, available at <https://www.michigan.gov/egle/about/groups/toxics-steering-group> (accessed September 27, 2022).

¹⁴ Michigan TSG, *Interim Action Screening Levels*, p 16 (full citation *supra* fn 13).

¹⁵ A single indoor air sample is not adequate to determine whether the risk posed by TCE vapors was fully mitigated because the fluctuations of the concentrations of contaminants in the indoor air can significantly vary from day-to-day (e.g. 1000-fold), Holton, et al., *Temporal Variability of Indoor Air Concentrations under Natural Conditions in a House Overlying a Dilute Chlorinated Solvent Groundwater Plume*, Environ Sci Tech, 47, 13347-13354 (2013), and a single sample is not representative of the indoor air concentrations for the entire building.

¹⁶ June 2007 sampling detected TCE in indoor air at the Godfrey Property at 6.6 ppbv (or 35.47 $\mu\text{g}/\text{m}^3$).

2017, sampling of soil gas conducted by CGFH 955 Godfrey beneath the floor of the building (known as sub-slab soil gas sampling), at the Godfrey Property documented levels of TCE at concentrations up to 4,600,000 ug/m³. EGLE compared this value to media-specific volatilization to indoor air interim action screening levels to determine that these levels may present unsafe levels of contamination present in the indoor air.^{17,18}

56. EGLE received the results of the 2017 sub-slab sampling in March 2018, and on March 30, 2018, notified Defendant of its liability under Part 201 and its affirmative obligation under Part 201 to address environmental contamination at the Property and diligently pursue response activities.

57. In 2018, limited soil gas sampling at the Godfrey Property and at an adjacent parcel again showed TCE present at levels that pose a potential human health risk via the VIAP for occupants of the nearby buildings.

¹⁷ Though media specific screening levels are not enforceable or intended to be used to reach compliance for a release of contamination, comparison to media specific screening levels provides useful information when making risk management decisions. DEQ, Guidance Document for the Vapor Intrusion Pathway, May 2013, as amended, available at <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/RRD/Remediation/Resources/EGLE-Guidance-Document-For-The-Vapor-Intrusion-Pathway-May-2013-Remediation-and-Redevelopment-Divisi.pdf?rev=50967cc859194461bb9279f091f8e8fa&hash=25E637F0B867929FE35CB123F98BCDF5> (accessed September 27, 2022).

¹⁸ The cited concentration is also tens of thousands of times higher than the site-specific-criteria for soil gas calculated by EGLE, 67 ug/m³. EGLE calculated site-specific soil gas criteria for the Godfrey Property in 2019 after Defendant FKI Hardware refused to do so in response to EGLE's request. See below at Paragraphs 58 to 60 for further explanation.

58. EGLE made repeated requests and sent multiple violation notices to Defendant FKI Hardware in response to these results, demanding that Defendant conduct a thorough investigation and take necessary response actions to address threats to human health, including development of site-specific criteria for addressing the volatilization to indoor air pathway.

59. The Godfrey Property conditions are inconsistent with the assumptions necessary for generic criteria to be applied, first because the depth to groundwater is shallower than assumptions, and second because a report indicates portions of a facility building basement do not have a concrete block or poured concrete floor. In these situations, Mich Admin Code, R 299.14(2) and R 299.24(2) and Section 20118 of Part 201 require that a site-specific evaluation of the inhalation risks must be conducted. Additionally, TCE poses acute risks not addressed by generic criteria,¹⁹ and Michigan's rules require development of site-specific criteria to address acute risks from the volatilization to indoor air pathway. Mich Admin Code, R 299.28(1)(e).

60. EGLE calculated site-specific soil gas criteria for the Godfrey Property in 2019 after Defendant FKI Hardware refused to do so in response to EGLE's request. This site-specific criteria for TCE in soil gas is 67 ug/m³.

¹⁹ Mich Admin Code, R 299.50 and Table 4, which shows the inputs used to develop criteria. Table 4, in conjunction with the formulas and assumptions provided at Mich Admin Code, R 299.14 and R 299.24, shows that TCE GVIIC and SVIIC were developed to address chronic (rather than acute) risks.

61. In response to EGLE's multiple demands, in March 2020, Defendant completed a limited investigation evaluating potential off-site risks to the west and north of the Godfrey Property. (April 20, 2020 LimnoTech Report.) The results showed exceedances of the EGLE-developed site-specific soil gas criteria for TCE offsite to the north. EGLE requested that Defendant further investigate on-site and to the north. (April 20, 2020 LimnoTech Report.)

62. When Defendant FKI Hardware declined to undertake the needed investigation on-site and to the north, in May 2020, EGLE collected samples of groundwater, soil, and soil gas on the Godfrey Property, which confirmed the presence of TCE at levels 10,000 times the site-specific criteria, indicating levels that pose a risk to occupants of the buildings.

63. EGLE also sampled several groundwater monitoring wells for PFAS analysis in August 2020 at the Godfrey Property. PFOS and PFOA were detected in groundwater samples at concentrations exceeding generic groundwater used as drinking water cleanup criteria of 8 ppt (PFOA) and 16 ppt (PFOS).

64. In a September 2020 Enforcement Notice and Demand, EGLE both demanded work be completed and, as a result of EGLE's work at the site, demanded payment of past costs. (09/03/2020 Enforcement Notice and Demand Regarding the Releases at the Former Keeler Brass.)

65. As of the date of filing this Complaint, Defendant has refused to take the actions specifically and repeatedly requested by EGLE to investigate and address the risks posed by TCE released by Defendant to people entering and

occupying buildings on the Godfrey Property, despite the potential for acute exposures to occupants in the overlying buildings. Defendant has also failed to pay EGLE's past costs for response activities incurred as a result of Defendant's refusal to undertake appropriate investigation at the Godfrey Property.

66. The State requests this Court order Defendant to prepare and submit for approval to EGLE all necessary reports or plans, and to perform all further response activities necessary to protect the public health, safety, and welfare or the environment resulting from Defendant's releases or threatened releases of hazardous substances at the Godfrey Property, to achieve compliance with Part 201. Consistent with Part 201, the necessary response activities should include both investigation of the extent of the contamination at the facilities and the risks associated with that contamination, and mitigation of those risks. These actions should address all hazardous substances for which Defendant is responsible and should specifically address the acute risks posed by TCE at the Godfrey Property.

THE 32ND STREET PROPERTY—OWNERSHIP AND OPERATION HISTORY

67. From approximately 1960 until 2016, Defendant operated a manufacturing facility located at the 32nd Street Property in Kentwood, Michigan. Facility operations included metal parts washing and plating.

68. Defendant sold the property to Anchor Kentwood Industrial, LLC on December 15, 2016.

69. Metal parts washing included the use of a TCE parts degreaser. The historical operations of the Defendant have resulted in the release or threat of release of TCE and other hazardous substances into the environment and natural resources at and surrounding the 32nd Street Property.

70. It is well known that metal plating operations often used PFAS.²⁰ On information and belief, the historical operations of Defendant resulted in the release or threat of release of PFAS and other hazardous substances into the environment and natural resources surrounding the 32nd Street Property.

71. Defendant has performed limited investigation and response activities at the 32nd Street Property, including installation of a monitoring well network and a groundwater capture system to address exceedances of criteria for plating-related hazardous substances and TCE from the degreasing and cleaning operations. It continues to operate two groundwater capture systems and collects groundwater and wastewater samples for laboratory analysis. PFAS is an emerging contaminant for which EGLE has set standards more recently than Defendant began its response activities. Therefore, though Defendant's actions addressed other contaminants at the 32nd Street Property, the investigation did not include PFAS, nor did the response activities specifically target PFAS.

²⁰ Interstate Technology Regulatory Council, *PFAS – Per-and Polyfluoroalkyl Substances, 2.6 PFAS Releases to the Environment* (September 2021), § 2.6.1.3, available at <https://pfas-1.itrcweb.org/2-6-pfas-releases-to-the-environment/> (accessed September 27, 2022).

72. In December 2011, Defendant conducted a soil excavation in the vicinity of the former degreaser to remove 1,665 tons of TCE-contaminated soils from below the eastern portion of the building to address ongoing vapor intrusion concerns, but contaminated groundwater remains. To address remaining groundwater contamination, Defendant operates a groundwater pump and treat remediation system which collects TCE and PFAS impacted groundwater from a collection trench along the southern property boundary and filters it prior to permitted discharge to the sanitary sewer. This capture system addresses the plumes of other contaminants, including TCE and metal, but PFAS at the facility extends beyond the reach of the capture trenches and, therefore, all PFAS is not being addressed by the existing system.

73. A waste stream sample collected by City of Grand Rapids Water Resources Recovery Facility from the 32nd Street Property in July 2018 showed 2,266 ppt total PFOA/PFOS. Based on the presence of PFAS in the waste stream, EGLE requested that Defendant submit a work plan to investigate and address potential risks from PFAS at the 32nd Street Property. Limited sampling completed by Defendant in response to this request confirmed PFAS compounds at the 32nd Street Property in a tributary of Plaster Creek, which ultimately flows into the Grand River to the west, and in groundwater in excess of the generic groundwater used as drinking water cleanup criteria for a previously undiscovered and unmanaged contaminant. In July 2021, Defendant provided monitoring data to EGLE, but the submittal did not include any interpretation of what that data

meant or any work plan to address PFAS contamination. Defendant has not taken actions necessary to meet EGLE's request for a work plan to investigate and address potential risks from PFAS.

74. While in the past Defendant has been more responsive to EGLE's requests for action to comply with the law at the 32nd Street Property, Defendant's more recent responses are similar to its responses related to the Godfrey Property—refusal to do work and failure to comply with its obligations to investigate and address the PFAS contamination. The needed activities include fully delineating the extent of the contamination, including in the groundwater, the interface of the groundwater with surface water of the creek, and sediments in the creek tributary; and further response activities to address contamination not captured by the current treatment system.

**OTHER PROPERTIES OWNED OR OPERATED BY
THE DEFENDANT IN WESTERN MICHIGAN**

75. From the early 1960s to about 1984, Defendant owned and/or operated a facility located at 835 Hall Street SW, Grand Rapids, Michigan 49503 (the Hall Street Property). Documentation of hazardous substances on this facility that exceed applicable Part 201 criteria were provided to EGLE by new property owners/operators in Baseline Environmental Assessment (BEA) reports in 1997, 1998, and 2000.

76. From about 1923 to about 2005, Defendant owned and/or operated a facility located at 236 Stevens Street SW, Grand Rapids, Michigan (the Stevens

Street Property). Documentation of hazardous substances on this facility that exceed applicable Part 201 criteria were provided to EGLE by new property owners/operators in BEA reports in 2005 and 2007.

77. From about 1955 to about 1994, Defendant owned and/or operated a facility located at 311 N. Centennial Street, Zeeland, Michigan 49464 property (the Zeeland Property). Documentation of hazardous substances on this facility that exceed applicable Part 201 criteria were provided to EGLE by new property owners/operators in BEA reports in 2009 and 2020.

78. From about 1941 to about 1972, Defendant owned and/or operated a facility located at 39 State Street, Middleville, Michigan 49333 (the State Street Property). Documentation of hazardous substances on this facility that exceed applicable Part 201 criteria were provided to EGLE by new property owners/operators in BEA reports in 2010, 2013, and 2015, and an environmental investigation conducted by EGLE in 2015.

79. From about 1981 to about 1988, Defendant owned and/or operated a facility located at 3100 Broadway Avenue (parcel address is 4300 Ferry Street SW), Grandville, Michigan 49418 (the Grandville Property). Documentation of hazardous substances on this facility that exceed applicable Part 201 criteria were provided to EGLE by new property owners/operators in BEA reports in 2002.

80. From prior to 1978 to about 1988, Defendant owned and/or operated a facility located at 1315 Hancock Street (current parcel address is 609 Tupper Lake Street), Lake Odessa, Michigan 48849 (the Lake Odessa Property).

81. From at least 1966 to about 1986, Defendant owned and/or operated a facility located at 157 W. Beech Street NE, Cedar Springs, Michigan 49319 (the Cedar Springs Property).

82. On information and belief, Defendant's historical operations have resulted in the release or threatened release of PFAS and other hazardous substances into the environment and natural resources surrounding the Hall Street Property, the Stevens Street Property, the Zeeland Property, the State Street Property, the Grandville Property, the Lake Odessa Property, and the Cedar Springs Property.

83. Defendant is obligated under Part 201 to investigate all releases or threats of releases for which it is liable and to mitigate the impact of those releases at the Hall Street Property, the Stevens Street Property, the Zeeland Property, the State Street Property, the Grandville Property, the Lake Odessa Property, and the Cedar Springs Property.

84. Defendant is obligated to compensate the State for natural resource damages resulting from its releases or threats of release at the Hall Street Property, the Stevens Street Property, the Zeeland Property, the State Street Property, the Grandville Property, the Lake Odessa Property, and the Cedar Springs Property.

STATE REQUEST FOR INFORMATION

85. In September 2020, EGLE sent Defendant a Request for Information, Former Keeler Brass Company Properties in Michigan, pursuant to Section

20117(1) of Part 201. MCL 324.20117(1). This information request sought information regarding the Properties that are the subjects of this Complaint to help EGLE determine the scope of needed response activities under Part 201 and to otherwise enforce Part 201.

86. Counsel for Defendant responded with a letter on October 20, 2020, that primarily objected to the information request and provided only a very brief chart of publicly available information and a sentence or two of “Environmental Background” on each Property, the longest of which is 33 words.

87. In November 2020, EGLE responded with an Enforcement Notice and Request for Meeting regarding the Properties that are subject to this Complaint. In this letter, EGLE notified Defendant of the inadequacy of its responses to the information request, notified Defendant of its continuing violations of Part 201, and offered a meeting to discuss the Properties comprehensively through a mutually agreed upon plan. Counsel for Defendant responded, opting not to meet with EGLE.

CLAIMS FOR RELIEF

CLAIM I: LIABILITY UNDER PART 201 OF THE NREPA

88. The State realleges and incorporates by reference Paragraphs 1 through 87.

89. The purpose of Part 201 of the NREPA is to provide for appropriate response activities to eliminate unacceptable risks to public health, safety, or

welfare, or to the environment from environmental contamination at facilities within the State of Michigan. MCL 324.20102(c).

90. Part 201 of the NREPA authorizes the Attorney General, on behalf of the State, to commence a civil action seeking, among other things, “[t]emporary or permanent injunctive relief necessary to protect the public health, safety, or welfare, or the environment from the release or threat of release,” “[r]ecovery of state response activity costs pursuant to section 20126a”, and a “declaratory judgment on liability for future response activity costs and damages.” MCL 324.20137(1).

91. PFOA, PFOS, GenX, PFBS, PFHxS, PFHxA, and PFNA are “hazardous substances” under Section 20101(1)(x) of Part 201 of the NREPA, MCL 324.20101(1)(x).

92. TCE and other contaminants at the Properties are “hazardous substances” under Section 20101(1)(x) of Part 201 of the NREPA, MCL 324.20101(1)(x).

93. The leaking, emitting, discharging, escaping, leaching, dumping and disposal of hazardous substances constitute a “release” or “threat of release” as those terms are defined in Sections 20101(1)(pp) and 20101(1)(ccc) of the NREPA, MCL 324.20101(1)(pp) and MCL 324.20101(1)(ccc).

94. EGLE has established cleanup criteria for certain PFAS for exposure pathways including the groundwater-surface water interface for PFOA and PFOS

and groundwater as a source of drinking water for PFOA, PFOS, GenX, PFBS, PFHxS, PFHxA, and PFNA. MCL 324.20120e(1)(a); Mich Admin Code, R 299.44.

95. PFOA and PFOS in groundwater at and near areas where Defendant operated the Properties were detected at levels as high as 21.1 ppt (PFOA) and 2,850 ppt (PFOS), and exceed the generic criteria under Part 201 and those areas are “facilities” as defined in Section 20101(1)(s) of Part 201. MCL 324.20101(1)(s).

96. TCE at the Godfrey Property remains present at high levels and exceeds the site-specific soil gas criteria developed by EGLE to address the VIAP. Even if the Godfrey Property met the conditions for use of generic GVIIC and SVIIC numbers, the TCE levels at the Godfrey Property exceed those standards as well.

97. Hazardous substances, including TCE, PFAS, VOCs, and/or metals are at and near areas where Defendant operated the Godfrey Property, the 32nd Street Property, the Hall Street Property, the Stevens Street Property, the State Street Property, and the Grandville Property at levels that exceed applicable Michigan cleanup criteria under Part 201 and those areas are therefore “facilities” as defined in Section 20101(1)(s) of Part 201. MCL 324.20101(1)(s).

98. If further investigation reveals that the Lake Odessa and Cedar Springs properties, identified above and suspected to be facilities based on past operations at the sites, have had releases of hazardous substances to the environment at concentrations that exceed the relevant Part 201 generic criteria, these properties are also “facilities” as defined in Section 20101(1)(s) of Part 201. MCL 324.20101(1)(s).

99. Section 20126(1) of Part 201, MCL 324.20126(1), provides in part:

(1) (...) the following persons are liable under this part:

(a) The owner or operator of a facility if the owner or operator is responsible for an activity causing a release or threat of release.

(b) The owner or operator of a facility at the time of disposal of a hazardous substance if the owner or operator is responsible for an activity causing a release or threat of release.

(d) person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by the person, by any other person, at a facility owned or operated by another person and containing the hazardous substance.

100. Defendant is an owner or operator of a facility responsible for an activity causing a release or threat of release and is liable under MCL 324.20126(1)(a) and (b).

101. Section 20126a of Part 201, MCL 324.20126a, provides in part:

(1) Except as provided in section 20126(2), a person who is liable under section 20126 is jointly and severally liable for all of the following:

(a) All costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under this part.

(3) The amounts recoverable in an action shall include interest. This interest shall accrue from the date payment is demanded in writing, or the date of expenditure or damage, whichever is later. The rate of interest on the outstanding unpaid balance of the accounts recoverable under this section shall be the same rate as specified in section 6013(8) of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.613 of the Michigan Compiled Laws.

(6) If the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment because of an actual or threatened release from a facility, the attorney general may bring an action against any person who is liable under section 20126 or any other appropriate person to secure the relief that may be necessary to abate the danger or threat. The court has jurisdiction to grant such relief as the public interest and the equities of the case may require.

102. As a result of releases and threatened releases of hazardous substances for which FKI Hardware Inc. is responsible, the State has incurred and is continuing to incur response activity costs, including investigation, monitoring, and enforcement costs, at the Properties. Section 20137(1) of Part 201, MCL 324.20137(1), provides in part as follows:

Subject to subsections (2) and (3), in addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:

(a) Temporary or permanent injunctive relief necessary to protect the public health, safety, or welfare, or the environment from the release or threat of release.

(b) Recovery of state response activity costs pursuant to Section 20126a.

(d) A declaratory judgment on liability for future response costs and damages.

(e) A civil fine of not more than \$10,000.00 for each day of noncompliance without sufficient cause with a written request of the department pursuant to section 20114(1)(h). A fine imposed under this subdivision shall be based on the seriousness of the violation and any good faith efforts of the person to comply with this part.

(f) A civil fine of not more than \$1,000.00 for each day of violation of this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts of the person to comply with this part.

(j) Enforcement of the reporting requirements under section 20114.

(k) Any other relief necessary for the enforcement of this part.

103. Under Sections 20126a and 20137(1) of Part 201, MCL 324.20126a and MCL 324.20137(1), the State seeks declaratory relief in the form of a ruling that FKI Hardware is responsible for performing all further response activities necessary to protect the public health, safety, or welfare or the environment from the release or threat and release of hazardous substances at the Properties, and is liable for the State's past and future response activity costs including, but not limited to, interest and oversight of any future response activities that Defendant may perform.

104. Under Section 20114(1) of Part 201 of the NREPA, MCL 324.20114(1), as the liable owner or operator of property known to be a facility, Defendant FKI Hardware has an affirmative obligation at each of the Properties, with or without notice or demand from EGLE, to determine the nature and extent of Defendant FKI Hardware or its predecessors' releases of hazardous substances and to diligently pursue response activities necessary to achieve the cleanup criteria specified in Part 201 and its implementing rules.

105. Based on information gathered to date, the State has determined that unacceptable risks from TCE currently exist to occupants of the buildings at the Godfrey Property through the VIAP (volatilization to indoor air pathway) and that these exposure risks present an imminent and substantial endangerment, and

further investigation of potential risks and remedial actions to address and mitigate those risks are necessary to protect public health, safety, or welfare.

106. Defendant is obligated to prepare and submit for approval to EGLE all necessary reports or plans, and to perform all further response activities necessary to protect the public health, safety, and welfare or the environment from a release or threat of a release of hazardous substances at any facilities resulting from Defendant's releases or threatened releases in compliance with Part 201.

107. Part 201 of the NREPA authorizes the Attorney General, on behalf of the State, to commence a civil action seeking, among other things, "[t]emporary or permanent injunctive relief necessary to protect the public health, safety, or welfare, or the environment from the release or threat of release," "[r]ecovery of state response activity costs pursuant to section 20126a", and a "declaratory judgment on liability for future response activity costs and damages."

MCL 324.20137(1). Damages for which a responsible party is liable include "[d]amages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release." MCL 324.20126a(1)(c).

108. The State further seeks statutory penalties, civil fines, and any other relief available under Section 20137(1), MCL 324.20137(1).

109. The State is entitled to relief under Section 20137 of Part 201, MCL 324.20137, declaring that Defendant is a liable party under Part 201; requiring FKI Hardware Inc. to take such action as may be necessary to protect the

public health, safety, or welfare, or the environment; and awarding past and future response costs, and statutory penalties and civil fines.

CLAIM II: NATURAL RESOURCE DAMAGES UNDER PART 201

110. The State realleges and incorporates by reference Paragraphs 1 through 109.

111. The releases of hazardous substances, including PFAS and TCE, into the environment at and from the Properties constitute a “release” and “disposal” of a “hazardous substance” as those terms are defined in MCL 324.20101(pp), (m), and (x), respectively.

112. The releases of hazardous substances at and from the Properties resulted in injury to, destruction of, or loss of natural resources belonging to, managed by, controlled by, held in trust by, and/or appertaining to the State.

113. An owner or operator of a facility who is responsible for an activity causing a release or threat of release, or who is the owner or operator of a facility at the time of disposal of a hazardous substance, is liable under Part 201.

MCL 324.20126(1).

114. Section 20126a of Part 201, MCL 324.20126a, provides in part:

(1) Except as provided in section 20126(2), a person who is liable under section 20126 is jointly and severally liable for all of the following:

(a) All costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under this part.

(c) Damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release.

(4) In the case of injury to, destruction of, or loss of natural resources under subsection (1)(c), liability shall be to the state for natural resources belonging to, managed by, controlled by, appertaining to, or held in trust by the state or a local unit of government. Sums recovered by the state under this part for natural resource damages shall be retained by the department, for use only to restore, repair, replace, or acquire the equivalent of the natural resources injured or acquire substitute or alternative resources. There shall be no double recovery under this part for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition, for the same release and natural resource.

115. Section 20137(1) of Part 201, MCL 324.20137(1), provides authority for the State to seek natural resource damages in a lawsuit as follows:

Subject to subsections (2) and (3), in addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:

(c) Damages for the full value of injury to, destruction of, or loss of natural resources resulting from the release or threat of release, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release.

(d) A declaratory judgment on liability for future response costs and damages.

116. As the owner and operator of the Properties, Defendant is liable to the State for damages for the full value of injury to, destruction of, or loss of natural resources resulting from the release or disposal of hazardous substances, including the reasonable costs of assessing such injury, loss, or destruction.

MCL 324.20126a(1)(c).

117. The State of Michigan is authorized to bring a civil claim seeking recovery of damages for the full value of injury to, destruction of, or loss of natural

resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release or threat of release. MCL 324.20137(1)(c).

CLAIM III: LIABILITY UNDER PART 201 OF THE NREPA FOR FAILURE TO ADEQUATELY RESPOND TO INFORMATION REQUEST

118. The State realleges and incorporates by reference Paragraphs 1 through 117.

119. Part 201 authorizes EGLE to require production of any information a person may have related to “[t]he identification, nature, and quantity of materials that have been or are generated, treated, stored, handled, or disposed of at a facility or transported to a facility.” MCL 324.20117(1)(a).

120. Part 201 also authorizes EGLE to require production of any information a person may have related to “[t]he nature . . . of a release or threatened release at or from a facility.” MCL 324.20117(1)(b).

121. Section 20137(1) of Part 201, MCL 324.20137(1), provides in part as follows:

Subject to subsections (2) and (3), in addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following: . . . (i) Enforcement of information gathering and entry authority pursuant to section 20117.

122. Defendant FKI Hardware or its predecessors operated at each of the Properties identified in this Complaint and the September 21, 2020 information request. Defendant FKI Hardware’s operations at those properties were the types of operations that commonly use hazardous substances. EGLE has also identified concentrations of contamination in excess of applicable generic nonresidential

criteria at the Godfrey Property, the 32nd Street Property, the Hall Street Property, the Stevens Street Property, the Zeeland Property, the State Street Property, and the Grandville Property.

123. Based on the operational history of FKI Hardware and its predecessors, the State had a reasonable basis to believe there may be a release or threat of release of hazardous substances at these Properties.

124. EGLE made a request for information to Defendant on September 21, 2020.

125. All the information sought by the State from Defendant relates to either (1) the identification, nature, and quantity of materials sold at known and potential facilities throughout the State of Michigan, or (2) the nature of a known or potential release or threatened release and are therefore lawful requests necessary to EGLE's work to identify risks to the public and the environment and to require parties responsible under the law to address them.

126. Defendant has failed to provide anything but minimal, mostly publicly-available information in response to the request by EGLE,²¹ and the State has a reasonable basis to believe that the Defendant or its counsel have more detailed information that would be more responsive to EGLE's request.

127. The State's information request is not arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law, and therefore the State

²¹ Defendant's Counsel's letter on October 20, 2020, provided only a very brief chart of publicly available information and a sentence or two of "Environmental Background" on each Property, the longest of which is 33 words.

is invoking the terms of MCL 324.20117(8) to seek the Court's order as required in these circumstances to "enjoin interference and direct compliance with the request."

128. MCL 324.20117(9) further authorizes this Court to assess a civil fine of up to \$25,000 for each day of Defendant's unreasonable failure to comply with EGLE's information request.

REQUEST FOR RELIEF

WHEREFORE, the State respectfully requests that the Court enter judgment awarding the following relief:

A. Declare that Defendant is an owner or operator of a facility responsible for an activity causing a release or threat of release of a Part 201 hazardous substance and that as a liable party under the law, Defendant must conduct response activities under Part 201 to investigate and address the exceedances of criteria and unacceptable risks to the public health and the environment resulting from such releases at the Properties.

B. Order Defendant to prepare and submit for approval to EGLE all necessary reports or plans, and to perform all further response activities necessary to protect the public health, safety, and welfare or the environment resulting from Defendant's releases or threatened releases of hazardous substances at the Properties, to achieve compliance with Part 201. Consistent with Part 201, the necessary response activities should include both investigation of the extent of the contamination at the facilities and the risks associated with that contamination, and mitigation of those risks.

C. Order Defendant to institute protective measures to prevent endangerment to human health and the environment based on comparison to EGLE-developed site-specific soil gas criteria including, but not limited to: (a) additional assessment of the risks posed by the vapor source at the Godfrey Property; (b) mitigation of any known risks at the Godfrey Property and the 32nd Street Property; and (c) if investigation of the contamination at any of the Properties reveals any immediate threats, interim actions designed to abate these risks as required under Part 201.

D. Order Defendant to pay the State's past and future response activity costs incurred by the State in connection with Defendant's releases of Part 201 hazardous substances into the environment, including enforcement costs and attorney fees.

E. Impose a fine pursuant to MCL 324.20137(1)(f) of not more than \$10,000 for each day of violation of Part 201 of the NREPA, including failure to diligently pursue response activities under MCL 324.20114(1)(g).

F. Impose a civil fine pursuant to MCL 324.20137(1)(e) of not more than \$1,000 for each day of noncompliance with EGLE's request for response activities at the Godfrey Property pursuant to section 20114(1)(h).

G. Enter a judgment in favor of the State and against Defendant for natural resource damages resulting from Defendant's releases of hazardous substances at the Properties, including assessment costs;

H. Declare that Defendant is liable for any further natural resource damages, including reasonable assessment costs, that may occur as a result of hazardous substance releases at or from the Properties;

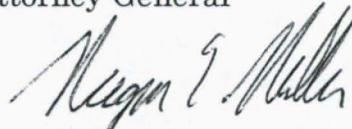
I. Direct Defendant to fully comply with the September 21, 2020 EGLE information request.

J. Impose a civil fine on Defendant of not more than \$25,000 for each day of noncompliance with the EGLE information request.

K. Such other relief as the Court deems just and proper.

Respectfully submitted,

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LF: Keeler Brass (former) Facility (EGLE) CIR/AG #2019-0251592-B/Complaint 2022-09-29