

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 44TH JUDICIAL CIRCUIT
LIVINGSTON COUNTY

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

Plaintiffs,

v

ASAHI KASEI PLASTICS NORTH
AMERICA, INC.,

Defendant

No. 20-030909-NZ

HON. JUDGE MICHAEL P. HATTY

CONSENT DECREE

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CONSENT DECREE

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EXHIBIT A – STUDY AREA

CONSENT DECREE

The Plaintiffs are Attorney General Dana Nessel, on behalf of the People of the State of Michigan, and the State of Michigan (collectively the State).

The Defendant is Asahi Kasei Plastics North America, Inc., a Michigan corporation with its principal place of business in Fowlerville, Michigan.

The State filed a Complaint in this action (Complaint), alleging that Defendant's ownership and operation of a custom reinforced plastic compounding business located at 6150 Whitmore Lake Road, Brighton, Michigan (Property), site ID #47000039, resulted in the releases of Per- and Poly-fluoroalkyl Substances (PFAS), including perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS)¹, into the environment within an area referenced herein and depicted in Exhibit A as the "Study Area" at concentrations which exceed applicable cleanup criteria under Part 201, Environmental Remediation, (Part 201) of the Michigan Natural Resources and Environmental Protection Act (NREPA), MCL 324.20101 *et seq.* The releases alleged by Plaintiff in the Complaint are hereafter referred to as the Releases.

The Complaint includes claims under Part 201, Part 31, Water Resources Protection, of the NREPA (Part 31), and Part 17, Michigan Environmental

¹ PFOA and PFOS are two chemical compounds included in the class of compounds known as PFAS.

Protection Act, of the NREPA (Part 17), and seeks declaratory and injunctive relief, including a determination that Defendant is responsible for response activities under Part 201 to address the Releases and to pay the State's costs for oversight, surveillance and performance of response activities, provision of alternative water supplies, natural resource damages, and State-led or State-approved health assessments or health studies. The Complaint also includes claims under common law theories against Defendant related to the Releases.

This Consent Decree (Decree) requires Defendant to undertake the response activities described herein which are associated with releases or threat of releases of PFOA and PFOS at or from the Property, to pay costs as described herein, and resolves all claims alleged by the State in the Complaint. The Parties agree, and the Court by entering this Decree finds, that the Decree is necessary to abate the release or threatened release of Contaminants of Concern (as defined in Paragraph 4.1), and to protect public health, safety, and welfare, and the environment with respect to the Contaminants of Concern in the Study Area.

To settle and resolve this litigation, the Parties agree that Defendant will assume responsibility — without admitting liability — under Part 201 to perform the response activities described herein and other requirements of this Decree. The agreement on this Decree by Defendant is in compromise of disputed claims, is for settlement purposes only, and is neither an admission of liability with respect to any issue dealt with in this Decree nor an admission of any factual allegations or legal conclusions stated or implied herein.

NOW, THEREFORE, before the taking of any testimony, and without this Decree constituting an admission by Defendant of any of the allegations in the Complaint or as evidence of the same, and upon the consent of the Parties, by their attorneys, it is hereby **ORDERED, ADJUDGED, AND DECREED:**

I. JURISDICTION

1.1 This Court has jurisdiction over the subject matter of this action pursuant to MCL 600.605, MCL 324.1701, MCL 324.3109, and MCL 324.20137. Venue is proper in this Court under MCL 324.20137, because the State is the Plaintiff and the Releases at issue in this action are located in Livingston County.

1.2 The Court determines that the terms and conditions of this Decree are fair, reasonable, adequately resolve the environmental issues raised in the public interest, and properly protect the interests of the people of the State of Michigan.

1.3 The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Decree and to resolve disputes arising under this Decree, including those that may be necessary for its construction, execution, or implementation, subject to Section XVIII (Dispute Resolution).

1.4 Defendant may not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

II. PARTIES BOUND

2.1 This Decree shall apply to and be binding upon Defendant and the State and their successors and assigns. Any change in ownership, corporate, or legal status of Defendant including, but not limited to, any transfer of assets, or of real or personal property, shall in no way alter Defendant's responsibilities under this Decree. To the extent that Defendant is the owner, now or in the future, of a part or all of the Study Area, Defendant shall provide the State with written notice prior to its transfer of ownership of part or all of the Study Area and shall provide a copy of this Decree to any subsequent owners or successors prior to the transfer of any ownership rights. Defendant shall comply with the requirements of MCL 324.20116, and the Part 201 Administrative Rules (Part 201 Rules).

2.2 Notwithstanding the terms of any contract that Defendant may enter with respect to the performance of response activities pursuant to this Decree, Defendant is responsible for compliance with the terms of this Decree and shall ensure that its contractors, subcontractors, laboratories, and consultants perform all response activities in conformance with the terms and conditions of this Decree.

2.3 The signatories to this Decree certify that they are authorized to execute this Decree and to legally bind the parties they represent.

III. STATEMENT OF PURPOSE

The Parties have determined that entry of this Decree will:

3.1 Expedite the continued performance of response activities, including those required under this Decree;

3.2 Ensure the Defendant will perform the response activities required by this Decree;

3.3 Require Defendant to develop and implement response activity plans as prescribed in this Decree to assess and abate threats to human health and the environment from the presence of the Contaminants of Concern within the Study Area as defined in this Decree;

3.4 Provide for the Defendant's payment of the State's Response Activity Costs, Attorney Fees, Litigation Costs, and Future Response Activity Costs in accordance with Section XVI (Payment of Costs); and

3.5 Serve the public interest and minimize litigation.

IV. DEFINITIONS

4.1 "Contaminants of Concern" means PFOA and PFOS which are located within the Study Area as defined in this Decree.

4.2 "Day" means a calendar day.

4.3 “Decree” means this Consent Decree and any attachment hereto, including any future modifications, and any reports, plans, specifications, and schedules required by the Consent Decree which, upon approval of EGLE, shall be incorporated into and become an enforceable part of this Consent Decree.

4.4 “Defendant” means Asahi Kasei Plastics North America, Inc., a Michigan corporation with its principal place of business at 900 E Van Riper Rd, Fowlerville, Michigan 48836, and its successors.

4.5 “Effective Date” means the date that the Court enters this Decree.

4.6 “EGLE” means the Michigan Department of Environment, Great Lakes, and Energy, its successor entities, and those persons or entities acting on its behalf.

4.7 “FAM” means a financial assurance mechanism as defined in MCL 324.20101(1)(u) that is provided pursuant to Section VII (Financial Assurance) of this Agreement, to pay for monitoring, operation and maintenance, oversight, and other costs determined by the State to be necessary to assure the effectiveness and integrity of the remedial action.

4.8 “Future Response Activity Costs” means all costs incurred by the State after the Effective Date that are response activity costs as defined in MCL 324.20101(w), to oversee, enforce, monitor, and document compliance with this Decree, and to perform response activities as defined in MCL 324.20101(yy) that are required by this Decree, including, but not limited to: evaluation, interim response

activity, remedial action, demolition, and providing an alternative water supply. Future Response Activity costs also include, but are not limited to, the State's costs incurred after the Effective Date to monitor response activities within the Study Area, observe and comment on field activities, review and comment on submissions, collect and analyze samples, evaluate data, purchase equipment and supplies to perform monitoring activities, attend and participate in meetings, prepare and review cost reimbursement documentation, and perform response activities pursuant to Paragraph 6.14 (EGLE's Performance of Response Activities) and Section XII (Emergency Response). Contractor costs incurred by the State are also considered Future Response Activity Costs.

4.9 "Study Area" means the area depicted on Exhibit A, which provides a geographic perimeter that confines the area within which Defendant is obligated to conduct response activities as set forth in this Decree.

4.10 "Long-Term Remedial Action Costs" means those costs necessary to assure the performance of monitoring, operation and maintenance, oversight, and other costs that are determined by EGLE to be necessary to assure the effectiveness and integrity of the remedial action.

4.11 "Part 201" means Part 201, Environmental Remediation, of the NREPA, MCL 324.20101 *et seq.*, criteria developed pursuant to MCL 324.20120a(1), and the Part 201 Administrative Rules.

4.12 "Part 201 Rules" means the administrative rules promulgated under

Part 201.

4.13 “Party” means Defendant or the State of Michigan (the State).

“Parties” means Defendant and the State.

4.14 “Response Activity Plan” means a plan for undertaking response activities. A Response Activity Plan may include one or more of the following:

- (a) A plan to undertake interim response activities;
- (b) A plan for remedial investigation;
- (c) An Evaluation Report;
- (d) A Feasibility Study; or
- (e) A Remedial Action Plan.

4.15 “RRD” means the Remediation and Redevelopment Division of EGLE and its successor entities.

4.16 “Submissions” means all plans, reports, schedules, and other submissions that Defendant is required to provide to EGLE pursuant to this Decree. “Submissions” does not include the notifications set forth in Section XIII (*Force Majeure*) of this Decree.

4.17 “Work Area” or “Work Areas” means any portion of the “Study Area,” defined in this Decree at Paragraph 4.10 and illustrated on Exhibit A, where Contaminants of Concern exceed: (1) the groundwater cleanup criteria for unrestricted residential use under Part 201; (2) the groundwater-surface water interface criteria under Part 201 at the groundwater-surface water interface, or (3)

state soil criteria, or site-specific criteria or screening levels for soil approved by EGLE under this Decree.

4.18 Unless otherwise stated herein, all other terms used in this Decree, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301, or Part 201, shall have the same meaning in this Decree as in Part 3 and Part 201.

V. COMPLIANCE WITH STATE AND FEDERAL LAWS

5.1 All actions required to be taken pursuant to this Decree shall be undertaken in accordance with the requirements of all applicable state and federal laws, rules, and regulations, including, but not limited to, Part 201 and the Part 201 Rules. Other State agencies may also be called upon to review the performance of response activities under this Decree.

5.2 This Decree does not relieve the Defendant's obligations to obtain and maintain compliance with permits.

VI. PERFORMANCE OF RESPONSE ACTIVITIES

6.1 Performance Objectives

Defendant shall perform Response Activities regarding the presence of Contaminants of Concern at Work Areas within the Study Area to meet the following performance objectives:

(a) To the extent that Defendant is the owner or operator, now or in the future, of part or all of a Work Area within the Study Area, Defendant shall achieve and maintain compliance with MCL 324.20107a(1) and the Part 201 Rules.

(b) Defendant shall conduct a Remedial Investigation (RI). The performance objective of the RI is to assess conditions within the Study Area, in order to select an appropriate remedial action that adequately addresses the presence of Contaminants of Concern in any Work Area identified in the RI, including the following investigations:

(i) Defendant shall complete a survey of water wells within the Study Area and conduct sampling and analysis of monitoring and drinking water wells as set forth in this Decree.

(ii) Defendant shall identify affected drinking water well users within the Study Area where PFOA exceeds groundwater criteria protective of drinking water under Part 201 and as an interim action shall provide those well users with filters or bottled water pending evaluation of an alternative long-term drinking water source approved by EGLE.

(iii) Defendant shall investigate the location and scope of Contaminants of Concern in soils in specified potential soil source areas within the Study Area at levels that exceed applicable default criteria for soil under Part 201, unless Defendant elects to propose, and EGLE approves, site-specific criteria or screening levels for soil with the goal of preventing

leaching of Contaminants of Concern into groundwater at levels that would exceed groundwater Part 201 cleanup criteria resulting in unacceptable risks to receptors as set forth in Part 201.

(iv) Defendant shall locate possible exceedances of groundwater-surface water interface at applicable points of compliance within the Study Area and assess concentrations of Contaminants of Concern to determine locations where further response activities are required to comply with MCL 324.20120e.

(c) Based on the Remedial Investigation conducted under this Decree, Defendant shall prepare and submit a Feasibility Study that evaluates and proposes remedial actions to address Contaminants of Concern that exceed applicable criteria at complete or potentially complete exposure pathways identified in the Remedial Investigation within the Study Area as required by this Decree.

(d) Defendant shall satisfy and maintain compliance with (1) the groundwater cleanup criteria under Part 201 for unrestricted residential use for PFOA associated with the Releases within the Study Area; (2) the groundwater-surface water interface criteria for the Contaminants of Concern within the Study Area at any identified groundwater surface water interface compliance point; and (3) Part 201 criteria or the screening levels or site-specific criteria approved by EGLE for Contaminants of Concern present in soil at specified potential soil source areas within the Study Area,

(e) Defendant shall comply with all applicable requirements of MCL 324.20114(1)(b), MCL 324.20114c, MCL 324.20118, MCL 324.20120a, MCL 324.20120d, and MCL 324.20120e.

(f) Defendant shall assure the ongoing effectiveness and integrity of the remedial actions specified by this Decree.

6.2 In accordance with this Decree, Defendant shall assure that all Response Activity Plans for conducting response activities are designed to achieve the performance objectives identified in Paragraph 6.1(a) through (f). Defendant shall develop each Response Activity Plan and perform the response activities contained in each EGLE-approved Response Activity Plan in accordance with the requirements of Part 201 and this Decree. Upon EGLE approval, each component of each Response Activity Plan and any approved modifications shall be deemed incorporated into this Decree and made an enforceable part of this Decree. If there is a conflict between the requirements of this Decree and any EGLE-approved Response Activity Plan, the requirements of this Decree shall prevail.

6.3 Quality Assurance Requirements

(a) Within sixty (60) days of the Effective Date, Defendant shall submit to EGLE for review and approval, a Quality Assurance Project Plan (QAPP), which describes the quality control, quality assurance, sampling protocol, and chain of custody procedures that will be used in carrying out the tasks required by this Decree. Defendant agrees to develop a QAPP in accordance with the United States

Environmental Protection Agency's, "EPA Requirements for Quality Assurance Project Plans," EPA QA/R-5, March 2001; "Guidance for Quality Assurance Project Plans," EPA QA/G-5, December 2002; and "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," American National Standard ANSI/ASQC E4-1994.

(b) Defendant agrees to utilize recommended sampling methods, analytical methods, and analytical detection levels specified in the "March 2016 Application of Target Detection Limits and Designated Analytical Resource Materials." Defendant agrees to utilize EGLE's 2002 "Sampling Strategies and Statistics Training Materials for Part 201 Cleanup Criteria" and "Incremental Sampling Methodology and Applications," January 2018 to determine the number of samples required to verify the cleanup and to determine sampling strategy. Defendant agrees to comply with the above documents or documents that supersede or amend these documents, and may utilize other methods demonstrated by Defendant to be appropriate as approved by EGLE.

(c) For groundwater and drinking water sample analysis, Defendant shall utilize methodology required by EGLE, including but not limited to U.S. EPA Standard Method 537 version 1.1, or subsequent U.S. EPA-approved versions. Defendant shall use the minimum analyte list for U.S. EPA Method 537.1

6.4 Health and Safety Plan (HASP)

Within sixty (60) days of the Effective Date, Defendant shall submit to EGLE a HASP that is developed in accordance with the standards promulgated pursuant

to the National Contingency Plan, 40 CFR 300.150; the Occupational Safety and Health Act of 1970, 29 CFR 1910.120; and the Michigan Occupational Safety and Health Act, 1974 PA 154, as amended, MCL 408.1001 *et seq.* Response activities performed by Defendant pursuant to this Decree shall be in accordance with the HASP. The HASP is not subject to EGLE's approval under Section IX (Submissions and Approvals) of this Decree.

6.5 Notices of Migration

Within sixty (60) days of the Effective Date, Defendant shall provide Notices of Migration, as described in MCL 324.20114(1)(b)(ii), to all owners of property within the Study Area where Contaminants of Concern above applicable criteria are known to be present as of the Effective Date, and Defendant shall also provide such Notices within thirty (30) days of obtaining such knowledge after the Effective Date.

6.6 Remedial Investigation

(a) Within sixty (60) days of the Effective Date, Defendant shall submit to EGLE for its review and approval a Remedial Investigation Response Activity Plan that includes, but is not limited to, the investigations of the pathways and risks set forth below, and includes a schedule subject to approval by EGLE for the submittal and implementation of each investigation.

(i) Water Well Survey.

Defendant shall submit a Water Well Survey within the Study Area to EGLE for its review and approval within sixty (60) days of the Effective Date. The

survey shall include all existing wells used for drinking water and irrigation purposes within the Study Area.

(ii) Groundwater Investigation.

(A) Defendant shall submit to EGLE, for its review and approval, a Groundwater Investigation Response Activity Plan to define the extent of Contaminants of Concern in groundwater within the Study Area.

(B) Delineation of the plume within the Study Area will be based on the Contaminants of Concern as defined in this Decree and Defendant must demonstrate delineation to concentrations below the Part 201 drinking water cleanup criteria for PFOA and PFOS in accordance with Paragraph 6.6(a)(ii)(E).

(C) Laboratory analysis of groundwater samples shall be analyzed for the Michigan PFAS recommended PFAS analyte list.

(D) The groundwater investigation must include a schedule for implementation.

(E) The groundwater investigation required by this paragraph may occur in phases. The Parties agree that the first phase of the Groundwater Investigation Response Activity Plan will occur within the green hatched area within the Study Area which is depicted on Exhibit A.

(i) The Parties anticipate that each phase of the Groundwater Investigation Response Activity Plan will be conducted through a stepped approach. The first step will propose investigation of Contaminants of Concern at the Property and in areas contiguous to the Property. Based on existing data and data collected during the Groundwater Investigation Response Activity Plan, Defendant will propose additional steps to fully delineate the Contaminants of Concern in the Study Area.

(ii) If Defendant, based on data collected through the Groundwater Investigation Response Activity Plan outlined in this Decree, conclude that the extent of Contaminants of Concern have been fully delineated and remaining concentrations of Contaminants of Concern above the Part 201 drinking water cleanup criteria for PFOA and PFOS within the Study Area are unrelated to the Property, Defendant may propose a demonstration in a modified Groundwater Investigation Response Activity Plan in accordance with Paragraph 6.11 to EGLE demonstrating that Defendant has satisfied the requirement to delineate Contaminants of Concern under this Decree. Any demonstration proposed under this Paragraph is subject to EGLE's review and approval. Any arguments regarding divisibility of harm or apportionment must meet the requirements of MCL 324.20129 and are subject to EGLE's review and approval.

(F) If the groundwater sampling pursuant to this Paragraph 6.6 detects PFOA in excess of the drinking water cleanup criteria under

Part 201, Defendant shall notify EGLE's Project Manager within 24 hours of the receipt of such results and Defendant shall then sample all potable wells within 500 feet of the PFOA exceedance within 10 (ten) days of receiving the groundwater sampling result detecting PFOA.

(G) If any potable well required to be sampled within the Study Area has PFOA in excess of the drinking water cleanup criterion under Part 201, Defendant shall immediately provide a filter and/or bottled water to the potable well user and shall undertake further response actions as required in Paragraphs 6.8(a)(iv) and 6.9 of this Decree.

(iii) **Groundwater-Surface Water Interface (GSI)**

Investigation.

(A) Defendant shall submit for EGLE's review and approval a GSI Investigation Response Activity Plan to evaluate the potential impacts from Contaminants of Concern in groundwater to surface water bodies within the Study Area in order to assess and identify any areas of groundwater-surface water interface.

(B) If the GSI investigation identifies any areas of potential groundwater-surface water interface, Defendant must sample at the GSI point of compliance and shall propose additional response activities to address any Contaminants of Concern which exceed applicable GSI criteria under Part 201 in

accordance with Paragraphs 6.8(a)(iii) and 6.9 of this Decree to meet the requirements of MCL 324.20120e.

(iv) **Soil Investigation.**

(A) Defendant shall submit a Response Activity Plan to investigate soil contamination in the source areas of the retention pond and stormwater sewer flow path and outfall (Potential Soil Source Areas).

(B) Defendant's soil investigation shall be designed to identify Contaminants of Concern in soils in the Potential Soil Source Areas at levels that would allow leaching of Contaminants of Concern to groundwater at levels that exceed applicable groundwater cleanup criteria under Part 201.

(C) Defendant may propose use of the state criteria for Contaminants of Concern in soil published in the Part 201 criteria tables, or Defendant may propose site specific groundwater protection criteria or screening levels for Contaminants of Concern in soil that will prevent Contaminants of Concern from leaching into groundwater at levels that would exceed groundwater cleanup criteria resulting in unacceptable risks to receptors.

(D) Site-specific criteria or screening levels proposed by Defendant shall be subject to EGLE's review and approval.

(E) If the Soil Investigation required under this Section identifies exceedances of the criteria or screening levels selected for use by

Defendant in Paragraph 6.6(a)(iv)(C) and approved under Paragraph 6.6(a)(iv)(D), if applicable, Defendant shall undertake further response actions as required in Paragraphs 6.8(a)(ii) and 6.9 of this Decree.

(b) Within thirty (30) days of receiving EGLE's approval of any Remedial Investigation Response Activity Plan in this Paragraph 6.6, Defendant shall commence performing the response activities contained in the approved RI Response Activity Plan and submit progress reports and an Evaluation Report in accordance with this Decree.

6.7 Evaluation Report

(a) Within ninety (90) days after Defendant completes the remedial investigation response activities required in Paragraph 6.6, Defendant shall submit to EGLE, for review and approval, an Evaluation Report, that compiles the information collected during the remedial investigation provisions at Paragraph 6.6(a)(i), (ii), (iii), and (iv). The Evaluation Report shall describe the nature, extent, and impact of Contaminants of Concern within the Study Area. The Evaluation Report should be of sufficient scope to provide the necessary information and data for EGLE to make a decision regarding approval of the remedial action for the Work Areas within the Study Area. The Evaluation Report shall provide for the following:

(i) A description of the history and nature of Defendant's operations at the Property.

(ii) A compilation of the data and information gathered during the investigation response activities required by Paragraph 6.6.

(iii) A conceptual site model that complies with ASTM E1689-95(2014) and the USEPA's Environmental Cleanup Best Management Practices: Effective Use of the Project Life Cycle Conceptual Site Model (EPA 542-F-11-011), July 2011.

(iv) If Defendant, based on data collected through the Remedial Investigation required pursuant to Paragraph 6.6, concludes that the extent of Contaminants of Concern have been fully delineated and remaining concentrations of Contaminants of Concern above applicable criteria for PFOA and PFOS within the Study Area are unrelated to the Property, Defendant may propose a demonstration to EGLE in this Evaluation Report that it has satisfied the requirement to delineate Contaminants of Concern under this Decree. Any demonstration proposed under this Paragraph is subject to EGLE's review and approval. Any arguments regarding divisibility of harm or apportionment must meet the requirements of MCL 324.20129 and are subject to EGLE's review and approval.

6.8 Feasibility Study

(a) Defendant shall conduct a feasibility study of potential remedial actions necessary to address Contaminants of Concern within the Study Area, based on the results of the remedial investigation. The remedial actions evaluated

shall be those actions necessary to do all of the following within the Study Area regarding the Contaminants of Concern and shall include, but are not limited to:

(i) Preventing migration or expansion of the delineated plume of PFOA in groundwater and monitoring plume stability, which may be achieved through regular sampling of monitoring wells on an approved sampling frequency;

(ii) Evaluating the scope and concentration of soil contamination that exceeds state criteria for the Contaminants of Concern in soil or exceeds the approved site-specific criteria or screening levels for the Contaminants of Concern (whichever is applicable by Defendant's selection subject to EGLE's approval); and proposing appropriate excavation, disposal, and/or in situ remediation of the areas of exceedance in accordance with Part 201;

(iii) Addressing any exceedances of GSI criteria for the Contaminants of Concern at a groundwater-surface water interface point of compliance in accordance with MCL 324.20120e; and

(iv) Proposing long-term alternative drinking water remedies for potable well users within the Study Area where PFOA exceeds drinking water cleanup criteria under Part 201, including provision or extension of municipal water. Defendant shall also propose actions to properly cap and abandon potable wells that are replaced by municipal water and irrigation wells where PFOA exceeds drinking water cleanup criteria under Part 201, following applicable Public Health Code requirements.

(b) The Feasibility Study shall propose remedial actions to address the Contaminants of Concern in the Study Area and shall be submitted to EGLE for its review and approval within sixty (60) days of EGLE's notice of approval of the Evaluation Report.

6.9 Remedial Action

(a) Within sixty (60) days of receiving EGLE approval of the actions proposed in the Feasibility Study, Defendant shall submit a Response Activity Plan for the selected remedial actions within the Study Area that meet the Performance Objectives in Paragraph 6.1 (Remedial Action Response Activity Plan). The Remedial Action Response Activity Plan shall provide for the following, to the extent applicable:

(i) A citation to the applicable cleanup criteria under this Decree that are relied upon by the proposed remedial action.

(ii) A detailed description of the specific work tasks to be conducted pursuant to the Remedial Action Response Activity Plan, a description of how these work tasks will meet the performance objectives described in Paragraph 6.1 of this Decree, and a description and supporting documentation of how the results of the Evaluation Report, and other response activities that have been performed at the Work Areas, support the selection of the remedial action contained in the Remedial Action Response Activity Plan.

(iii) Implementation schedules for conducting the response activities identified in the Remedial Action Response Activity Plan and for submission of progress reports.

(iv) A plan for obtaining access to any properties not owned or controlled by Defendant that is needed to perform the response activities contained in the Remedial Action Response Activity Plan.

(v) A description of the nature and amount of waste materials expected to be generated during the performance of response activities and the name and location of the facilities Defendant proposes to use for the off-site transfer, storage, and treatment or disposal of those waste materials.

(vi) A description of how soil relocation will be in compliance with MCL 324.20120c.

(vii) If the remedial action proposes to rely upon land and resource use restrictions to ensure the effectiveness and integrity of any containment or exposure barrier, or other land use or resource use restrictions necessary to ensure the effectiveness and integrity of the remedy, the Remedial Action Response Activity Plan shall include an explanation of the land use or resource use restrictions that will be utilized to comply with Section 20121 of the NREPA. The Defendant shall include draft land and resource use restrictions in an instrument allowed for under Section 20121 if there is sufficient information to develop the instrument.

(viii) If the performance of monitoring or operation and maintenance are necessary to ensure the ongoing effectiveness and integrity of the remedial action, a plan describing those monitoring and/or operation and maintenance response activities.

(b) Within sixty (60) days of receiving EGLE's approval of the Remedial Action Response Activity Plan, Defendant shall initiate the performance of the remedial action activities in accordance with the EGLE-approved implementation schedule and submit progress reports in accordance with EGLE-approved Response Activity Plan.

6.10 Achievement Report

(a) When the performance objectives in Paragraph 6.1 of this Decree have been achieved and the cleanup criteria provided in the Remedial Action Response Activity Plan have been satisfied, Defendant will submit an Achievement Report to EGLE for review and approval.

(b) The Achievement Report shall include a summary of response activities undertaken to satisfy the performance objectives of this Decree and cleanup criteria provided in the Remedial Action Response Activity Plan, and any supporting documentation and data, including documentation that the permanent marker(s), if required, have or has been installed.

6.11 Modification of a Response Activity Plan

(a) If EGLE determines that a modification to a Response Activity Plan is necessary to meet and maintain the applicable performance objectives specified in Paragraph 6.1 of this Decree, to comply with Part 201, or to meet any other requirement of this Decree, EGLE may require that such modification be incorporated into a Response Activity Plan previously approved by EGLE under this Decree upon informing Defendant of the necessary modification with reasons for that change. If extensive modifications are necessary, EGLE may require Defendant to develop and submit a new Response Activity Plan.

(b) Defendant may request that EGLE consider a modification to a Response Activity Plan by submitting such request for modification along with the proposed change in the Response Activity Plan and the justification for that change to EGLE for review and approval. Unless the Parties agree to a different timeframe, any such request for modification by Defendant must be forwarded to EGLE at least thirty (30) days prior to the date that the performance of any affected response activity is due.

(c) Any Response Activity Plan modifications or any new Response Activity Plans shall be developed in accordance with the applicable requirements of this Paragraph 6.11 and shall be submitted to EGLE for review and approval in accordance with the procedures set forth in Section IX (Submissions and Approvals) of this Decree.

(d) Upon receipt of EGLE's approval, Defendant shall perform the response activities specified in a modified Response Activity Plan or a new Response Activity Plan in accordance with EGLE-approved implementation schedules.

6.12 Public Notice and Public Meeting Requirements pursuant to MCL 324.20120d.

If EGLE determines there is significant public interest in the results of an Evaluation Report or proposed Remedial Action Response Activity Plan as required by this Decree and if Defendant proposes a Remedial Action Response Activity Plan based on categorical criteria provided for in MCL 324.20120a(1)(c), MCL 324.20120a(1)(d), or MCL 324.20120a(2), EGLE will notify Defendant and make the Evaluation Report or of proposed Remedial Action Response Activity Plan available for public comment. When EGLE determines that the Evaluation Report or proposed Remedial Action Response Activity Plan is acceptable for public review, a public notice regarding the availability of those of the Evaluation Report or proposed Remedial Action Response Activity Plan will be published, and those reports or plans shall be made available for review and comment for a period of not less than thirty (30) days. The dates and length of the public comment period shall be established by EGLE. If EGLE determines there is significant public interest, or EGLE receives a request for a public meeting, EGLE will hold such a public meeting in accordance with MCL 324.20120d(1) and MCL 324.20120d(2). Following the public review and comment period or a public meeting, EGLE may refer the Evaluation Report or proposed Remedial Action Response Activity Plan back to

Defendant for revision to address public comments and EGLE's comments. EGLE will prepare the final responsiveness summary document that explains the reasons for the selection or approval of a Remedial Action Response Activity Plan in accordance with the provisions of MCL 324.20120d(4) and MCL 324.20120d(5). Upon EGLE's request, Defendant shall provide information to EGLE for the final responsiveness summary document or Defendant shall prepare portions of the draft responsiveness summary document.

6.13 Progress Reports

(a) Defendant shall provide to EGLE's Project Manager written progress reports regarding response activities and other matters at the Work Areas related to the implementation of this Decree. These progress reports shall include the following:

(i) A description of the activities that have been taken toward achieving compliance with this Decree during the specified reporting period;

(ii) All results of sampling and tests and other data that relate to the response activities performed pursuant to this Decree and have been received by Defendant, its employees, or authorized representatives during the specified reporting period;

(iii) The status of any access issues that have arisen, which affect or may affect the performance of response activities, and a description of how Defendant proposes to resolve those issues and the schedule for resolving the issues;

(iv) A description of the nature and amount of waste materials that were generated and the name and location of the facilities that were used for the off-site transfer, storage, and treatment or disposal of those waste materials;

(v) A description of data collection and other activities scheduled for the next reporting period; and

(vi) Any other relevant information regarding other activities or matters at the Work Areas that affect or may affect the implementation of the requirements of this Decree.

(b) The first progress report shall be submitted to EGLE within ninety (90) days following the Effective Date. Thereafter, progress reports shall be submitted quarterly. Pursuant to Paragraph 24.1 of this Decree, EGLE may approve modification of the schedule for the submission of progress reports.

6.14 EGLE's Performance of Response Activities

If Defendant ceases to perform the response activities required by this Decree; is not performing response activities in accordance with this Decree; or is performing response activities in a manner that causes or may cause an

endangerment to human health or the environment, EGLE may, at its option and upon providing thirty (30) days prior written notice to Defendant, take over the performance of those response activities. EGLE, however, is not required to provide thirty (30) days written notice prior to performing response activities that EGLE determines are necessary pursuant to Section XII (Emergency Response) of this Decree. If EGLE finds it necessary to take over the performance of response activities that Defendant is obligated to perform under this Decree, Defendant shall reimburse the State for its costs to perform these response activities, including any accrued interest. Interest, at the rate specified in MCL 324.20126a(3), shall begin to accrue on the State's costs on the day the State begins to incur costs for those response activities. Costs incurred by the State to perform response activities pursuant to this Paragraph shall be in addition to the "Future Response Activity Costs" in Paragraph 16.4(a). Defendant shall provide reimbursement of these costs and any accrued interest to the State in accordance with Paragraphs 16.5, 16.6, and 16.7 of Section XVI (Payment of Costs) of this Decree.

6.15 EGLE Approval of Response Activity Plans

All Response Activity Plans are subject to EGLE review and approval in accordance with Section IX (Submissions and Approvals).

VII. FINANCIAL ASSURANCE

7.1 Defendant shall be responsible for providing and maintaining financial assurance as defined at MCL 324.20101(1)(u) in a mechanism acceptable to EGLE

to assure the performance of the Long-Term Remedial Actions required to ensure the effectiveness and integrity of Defendant's selected remedial action. The Defendant shall propose its initial FAM to EGLE for its review and approval at the time it submits its Remedial Action Response Activity Plan required under Paragraph 6.9 of this Decree. The initial FAM shall be established within thirty (30) days of EGLE's approval of Defendant's proposed FAM.

7.2 The FAM shall remain in an amount sufficient to cover Long-Term Remedial Action Costs within the Study Area for a thirty (30)-year period, unless a shorter period is proposed by Defendant and approved by EGLE. Unless the use of the Financial Test or Financial Test/Corporate Guarantee is approved as an acceptable FAM, the FAM shall remain in a form that allows EGLE to immediately contract for the response activities for which financial assurance is required in the event Defendant fails to implement the required tasks.

7.3 Sixty (60) days prior to the five (5)-year anniversary of the Effective Date and each subsequent five (5)-year anniversary, Defendant shall provide to EGLE a report containing the actual Long-Term Remedial Action Costs for the previous five (5)-year period and an estimate of the amount of funds necessary to assure Long-Term Remedial Action Costs for the following thirty (30)-year period (or shorter period, if proposed by Defendant and approved by EGLE) given the financial trends in existence at the time of preparation of the report (Long-Term Remedial Action Cost Report). The Long-Term Remedial Action Cost Report shall also include all assumptions and calculations used in preparing the necessary cost

estimate and shall be signed by an authorized representative of Defendant who shall confirm the validity of the data. Defendant may only use a present worth analysis if an interest accruing FAM is selected.

7.4 Within sixty (60) days after Defendant's submittal of the Long-Term Remedial Action Cost Report to EGLE, Defendant shall capitalize or revise the FAM in a manner acceptable to EGLE to address Long-Term Remedial Action Costs consistent with the conclusions of the Long-Term Remedial Action Cost Report unless otherwise notified by EGLE. If EGLE disagrees with the conclusions of the Long-Term Remedial Action Cost Report, Defendant shall capitalize the FAM to a level acceptable to EGLE within thirty (30) days of EGLE notification. If, at any time, EGLE determines that the FAM does not secure sufficient funds to address Long-Term Remedial Action Costs, Defendant shall capitalize the FAM or provide an alternate FAM to secure any additional costs within thirty (30) days of request by EGLE.

7.5 If, pursuant to the Long-Term Remedial Action Cost Report, Defendant can demonstrate that the FAM provides funds in excess of those needed for Long-Term Remedial Action Costs for the Study Area, Defendant may request a modification in the amount. Any requested FAM modifications must be accompanied by a demonstration that the proposed FAM provides adequate funds to address future Long-Term Remedial Action Costs within the Study Area. Upon EGLE approval of the request, Defendant may modify the FAM as approved by

EGLE. Modifications to the FAM pursuant to this Paragraph shall be approved by the EGLE RRD Director or his or her authorized representative.

7.6 If the use of the Financial Test is approved as an acceptable FAM, Defendant shall, within ninety (90) days after the end of Defendant's next fiscal year and the end of each succeeding fiscal year, submit to EGLE the necessary forms and supporting non-confidential documents to demonstrate to the satisfaction of EGLE that Defendant can continue to meet the Financial Test requirements. If Defendant can no longer meet the Financial Test requirements, Defendant shall submit a proposal for an alternate FAM to satisfy its financial obligations.

7.7 If the use of the Financial Test is approved as an acceptable FAM, EGLE, based on a reasonable belief that Defendant may no longer meet the requirements for the Financial Test, may require non-privileged reports of financial condition at any time from Defendant, and/or require Defendant to submit updated Financial Test information to determine whether it meets the Financial Test criteria. Defendant shall provide, with reasonable promptness to EGLE, any other non-privileged data and information that may reasonably be expected to materially adversely affect Defendant's ability to meet the Financial Test requirements. If EGLE finds that Defendant no longer meets the Financial Test requirements, Defendant shall, within thirty (30) days after notification from EGLE, submit a proposal for an alternate FAM to satisfy its financial obligations.

7.8 If the use of the Financial Test/Corporate Guarantee is approved as an acceptable FAM, Defendant shall comply with the terms of the Corporate Guarantee. The Corporate Guarantee shall remain in place until Long-Term Remedial Action Costs are no longer required within the Study Area or Defendant establishes an alternate FAM acceptable to EGLE.

7.9 If Defendant wishes to change the type of FAM or establish a new FAM, Defendant shall submit a request to EGLE for approval. Upon EGLE approval of the request, Defendant may change the type of FAM or establish the new FAM as approved by EGLE. Modifications to the FAM pursuant to this Paragraph shall be approved by the EGLE RRD Division Director or his or her authorized representative.

7.10 If Defendant dissolves or otherwise ceases to conduct business and fails to make arrangements acceptable to EGLE for the continued implementation of all activities required by the remedial action, all rights under this Agreement regarding the FAM shall immediately and automatically vest in EGLE in accordance with the FAM.

7.11 Notwithstanding the provisions of Paragraphs 7.6 – 7.8 of this Decree, EGLE is not required to approve or to maintain approval of a Financial Test/Corporate Guarantee as an acceptable FAM under this Section unless Defendant provides all documents, reports, financial information, and other information that is necessary for EGLE to assess Defendant's financial condition

and to confirm Defendant's ability to meet and maintain compliance with the Financial Test/Corporate Guarantee requirements. Defendant's decision to withhold documents, reports, financial information, or other information on the basis that they are confidential or privileged does not relieve Defendant of its burden to produce the information deemed necessary by EGLE in its sole discretion to confirm that Defendant meets the Financial Test/Corporate Guarantee requirements.

VIII. ANNUAL PROGRESS REPORTS

Within sixty (60) days after the first anniversary of the Effective Date and within sixty (60) days after each anniversary thereafter, Defendant shall provide an annual report to the EGLE project manager describing the implementation of the response activities, including, but not limited to, operation and maintenance, monitoring activities, and any other response activities that have been undertaken by Defendant within the Work Areas for the prior year. The report shall include an assessment and documentation of the integrity of all exposure control mechanisms on which the remedial action is dependent (e.g., barriers, permanent markers); and compliance with land or resource use restrictions, including institutional controls.

IX. SUBMISSIONS AND APPROVALS

9.1 All Submissions required by this Decree shall comply with all applicable laws and regulations and the requirements of this Decree and shall be delivered to EGLE in accordance with the schedule set forth in this Decree. All Submissions delivered to EGLE pursuant to this Decree shall include a reference to

the Study Area and Court Case No. 20-30909-NZ. All Submissions delivered to EGLE for approval shall also be marked “Draft” and shall include, in a prominent location in the document, the following disclaimer: *“Disclaimer: This document is a DRAFT document that has not received approval from the Michigan Department of Environment, Great Lakes, and Energy (EGLE). This document was prepared pursuant to a court Consent Decree. The opinions, findings, and conclusions expressed are those of the authors and not those of EGLE”*. Response Activity Plans required or submitted under this Decree are not subject to the provisions of MCL 324.20114b of the NREPA.

9.2 For any Submission relating to response activities that is required to be submitted for approval pursuant to this Decree, EGLE will in writing:

- (a) approve the Submission; (b) approve the Submission with conditions;
- (c) disapprove the Submission; or (d) notify Defendant that the plan does not contain sufficient information for EGLE to make a decision. Upon receipt of a notice of approval or approval with conditions from EGLE, Defendant shall proceed to take the actions and perform the response activities required by the Submission, as approved or as approved with conditions, and shall submit a new cover page and any modified pages of the Submission marked “Approved.”

9.3 Upon receipt of a notice of disapproval from EGLE pursuant to Paragraph 9.2(c) of this Decree, Defendant shall correct the deficiencies and provide the revised Submission to EGLE for review and approval within thirty (30) days, unless the notice of disapproval specifies a longer time period for resubmission.

Unless otherwise stated in EGLE's notice of disapproval, Defendant shall proceed to take the actions and perform the response activities not directly related to the deficient portion of the Submission. Any stipulated penalties applicable to the delivery of the Submission shall accrue during the thirty (30) day period or other time period specified for Defendant to provide the revised Submission, but shall not be assessed unless the resubmission is also disapproved and EGLE demands payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties) of this Decree. EGLE will review the revised Submission in accordance with the procedure set forth in Paragraph 9.2 of this Decree. If EGLE disapproves a revised Submission, EGLE will advise Defendant and, as set forth above, stipulated penalties shall accrue from the date of EGLE's disapproval of the original Submission and continue to accrue until Defendant delivers an approvable Submission.

9.4 If any initial Submission contains significant deficiencies such that the Submission is not in the judgment of EGLE a good faith effort by Defendant to deliver an acceptable Submission that complies with Part 201 and this Decree, EGLE will notify Defendant of such, and will deem Defendant to be in violation of this Decree. Stipulated penalties, as set forth in Section XVII (Stipulated Penalties) of this Decree, shall begin to accrue on the day after the Submission was due and continue to accrue until an approvable Submission is provided to EGLE.

9.5 Upon approval by EGLE, any Submission and attachments to Submissions required by this Decree, or any conditions that are the basis for an

approval, shall be considered part of this Decree and are enforceable pursuant to the terms of this Decree. If there is a conflict between the requirements of this Decree and any Submission or an attachment to a Submission, the requirements of this Decree shall prevail.

9.6 An approval or approval with conditions of a Submission shall not be construed to mean that EGLE concurs with all of the conclusions, methods, or statements in any Submission or warrants that the Submission comports with law.

9.7 Informal advice, guidance, suggestions, or comments by EGLE regarding any Submission provided by Defendant shall not be construed as relieving Defendant of its obligation to obtain any formal approval required under this Decree.

X. ACCESS

10.1 Upon the Effective Date of this Decree, and to the extent Defendant owns, controls or otherwise has access to the Property and associated properties within the Study Area, Defendant shall allow EGLE and its authorized employees, agents, representatives, contractors, and consultants to enter the Property and associated properties within the Study Area at all reasonable times for the purpose of conducting any activity for which access is required for the implementation of this Decree or to otherwise fulfill any responsibility under state or federal laws with respect to the Releases, including, but not limited to, the following:

- (a) Monitoring response activities or any other activities taking place pursuant to this Decree within the Study Area;
- (b) Verifying any data or information submitted to EGLE;
- (c) Assessing the need for, or planning, or conducting investigations relating to Contaminants of Concern within the Study Area as required under this Decree;
- (d) Obtaining samples;
- (e) Assessing the need for, or planning, or conducting response activities within the Study Area;
- (f) Assessing compliance with requirements for the performance of monitoring, operation and maintenance, or other measures necessary to assure the effectiveness and integrity of the remedial action;
- (g) Inspecting and copying non-privileged records, operating logs, contracts, or other documents;
- (h) Determining whether the Property or other property is being used in a manner that is or may need to be prohibited or restricted pursuant to this Decree; and
- (i) Assuring the protection of public health, safety, or welfare, or the environment.

10.2 To the extent that a property where the Response Activities are to be performed by the Defendant under Section VI (Performance of Response Activities) of this Consent Decree, is owned or controlled by persons other than the Defendant, the Defendant shall use its best efforts as specified in this Paragraph to secure from such persons written access agreements or judicial orders providing access for Defendant, EGLE, and their authorized employees, agents, representatives, contractors, and consultants. Defendant shall follow the process set forth below to obtain access as necessary to accomplish the purposes of this Consent Decree:

(a) Defendant shall make a verbal or written request to the property owner or authorized person for access necessary to implement activities required under this Consent Decree and in accordance with an EGLE approved work plan and implementation schedule and shall document the contact.

(b) If Defendant does not obtain access following the request for access in Paragraph 10.2(a), then Defendant shall offer reasonable compensation for access, to the extent not already offered, in a written communication by certified mail, with copy to EGLE, no later than sixty (60) Days after the request under Paragraph 10.2(a) is received by the property owner from whom access is sought.

(c) If Defendant does not obtain access within thirty (30) days after completing, at a minimum, the actions required in subparagraphs 10.2(a) and 10.2(b), Defendant shall provide EGLE copies of all written communications with the property owner or authorized representative not previously provided to EGLE

and shall request that EGLE communicate with the property owner to discuss the State's interests. EGLE shall send a written communication to the property owner or authorized representative by certified mail setting forth the purpose and need for access and identifying the property owner's responsibility to cooperate under applicable laws, with a copy to Defendant. EGLE's written communication shall direct the property owner to respond to the Defendant and shall notify the property owner that the Defendant may bring a judicial action to obtain access if the property owner refuses access or fails to respond to the Defendant within thirty (30) Days.

(d) Defendant may, prior to initiating judicial proceedings or at any other time when access is denied or a property owner is nonresponsive, submit modifications to Response Activity Plans previously approved by EGLE to provide alternative means of compliance with Response Activities required under Section VI (Performance of Response Activities) of this Consent Decree.

(e) The following process shall apply if Defendant does not obtain access after EGLE sends the written request under subparagraph 10.2(c):

(i) Within thirty (30) Days after the date of Defendant's receipt of a refusal of access after EGLE sends the written communication under subparagraph 10.2(c), or within forty (40) Days after EGLE has sent the written communication under subparagraph 10.2(c) and Defendant has received no response, Defendant shall initiate legal proceedings pursuant to Section 20135a of

Part 201, Mich. Comp. Laws § 324.20135a (“Part 201 Access Petition Action”), unless Defendant has initiated other legal proceedings to secure the necessary access. If, however, the Court in such legal proceedings decides not to grant access to sufficiently implement the activities required under this Decree, then Defendant shall initiate a Part 201 Access Petition Action within twenty (20) Days of that Court’s decision. Nothing in this Decree requires Defendant to admit liability under Part 201 in any filing to the Court for purposes of pursuing a Part 201 Access Petition Action.

(ii) Defendant shall provide documentation to EGLE that such judicial action has been filed in a court of appropriate jurisdiction.

(iii) If access sought under subparagraph 10.2(e) is granted, Defendant shall proceed with the Response Activities required under this Consent Decree;

(iv) If the Court does not grant access to sufficiently implement the activities required under this Decree, the Project Managers for Defendant and EGLE shall evaluate alternative means of compliance, including but not limited to modifications to approved plans.

10.3 Reasonable compensation shall be assessed based on information concerning, among other factors, (a) the amounts other property owners have accepted for such access; (b) information regarding the level of intrusiveness such access will require at the subject property; (c) the frequency of any such needed

access; and (d) market information regarding the value of the property, the value of easements or other limited property rights, and the value of comparable access agreements.

10.4 Defendant may, at any time, submit modifications to work plans previously approved by EGLE to provide alternative means of compliance with Response Activities required under Section VI (Performance of Response Activities) of the Consent Decree if access is denied or a property owner is nonresponsive.

10.5 Any lease, purchase, contract, or other agreement entered into by Defendant that transfers to another person a right of control over property within the Study Area shall contain a provision preserving for EGLE or any other person undertaking the response activities, and their authorized representatives, the access provided under this Section.

10.6 Any person who is granted access to property where response activities are to be performed by Defendant pursuant to this Decree shall comply with all applicable health and safety laws and regulations.

XI. SAMPLING AND ANALYSIS

11.1 All sampling and analysis conducted pursuant to this Decree shall be in accordance with the QAPP specified in Paragraph 6.3 and EGLE-approved Response Activity Plans.

11.2 Defendant, or its consultants or subcontractors, shall provide EGLE a ten (10) day notice prior to any sampling activity to be conducted pursuant to this Decree to allow the EGLE Project Manager, or his or her authorized representative, the opportunity to take split or duplicate samples or to observe the sampling procedures. In circumstances where a ten (10) day notice is not possible, Defendant, or its consultants or subcontractors, shall provide notice of the planned sampling activity as soon as possible to the EGLE Project Manager and explain why earlier notification was not possible. If the EGLE Project Manager concurs with the explanation provided, Defendant may forego the ten (10) day notification period for that particular sampling event.

11.3 Defendant shall provide EGLE with the results of all environmental sampling, and other analytical data generated relating to Contaminants of Concern within the Study Area in the performance or monitoring of any requirement under this Decree. These results shall be included in the progress reports set forth in Paragraph 6.13 of this Decree.

11.4 For the purpose of quality assurance monitoring, Defendant shall assure that EGLE and its authorized representatives are allowed access to any laboratory used by Defendant in implementing this Decree.

XII. EMERGENCY RESPONSE

12.1 If during the course of Defendant performing response activities pursuant to this Decree, an act or the occurrence of an event causes a release or

threat of release of a hazardous substance within the Study Area, or causes exacerbation of existing contamination within the Study Area, and the release, threat of release, or exacerbation poses or threatens to pose an imminent and substantial endangerment to public health, safety, or welfare, or the environment, Defendant shall immediately undertake all appropriate actions to prevent, abate, or minimize such release, threat of release, or exacerbation; and shall immediately notify EGLE Project Manager. In the event of EGLE Project Manager's unavailability, Defendant shall notify the Pollution Emergency Alerting System (PEAS) at 1-800-292-4706. In such an event, any actions taken by Defendant shall be in accordance with all applicable health and safety laws and regulations and with the provisions of the HASP referenced in Paragraph 6.4 of this Decree.

12.2 Within ten (10) days of notifying EGLE of such an act or event, Defendant shall submit a written report, setting forth a description of the act or event that occurred and the measures taken or to be taken to mitigate any release, threat of release, or exacerbation caused or threatened by the act or event and to prevent recurrence of such an act or event. Regardless of whether Defendant notifies EGLE under this Section, if an act or event causes a release, threat of release, or exacerbation, EGLE may: (a) require Defendant to stop response activities at the Work Area for such period of time as may be needed to prevent or abate any such release, threat of release, or exacerbation; (b) require Defendant to undertake any actions that EGLE determines are necessary to prevent or abate any such release, threat of release, or exacerbation; or (c) undertake any actions that

EGLE determines are necessary to prevent or abate such release, threat of release, or exacerbation. This Section is not subject to the dispute resolution procedures set forth in Section XVIII (Dispute Resolution) of this Decree.

XIII. FORCE MAJEURE

13.1 Defendant shall perform the requirements of this Decree within the time limits established herein, unless performance is prevented or delayed by events that constitute a “*Force Majeure*.” Any delay in the performance attributable to a *Force Majeure* shall not be deemed a violation of this Decree in accordance with this Section.

13.2 For the purposes of this Decree, a *Force Majeure* event is defined as any event arising from causes beyond the control of and without the fault of Defendant, of any person controlled by Defendant, or of Defendant’s contractors that delays or prevents the performance of any obligation under this Decree despite Defendant’s “best efforts to fulfill the obligation.” The requirement that Defendant exercise “best efforts to fulfill the obligation” includes Defendant using best efforts to anticipate any potential *Force Majeure* event and to address the effects of any potential *Force Majeure* event during and after the occurrence of the event, such that Defendant minimizes any delays in the performance of any obligation under this Decree to the greatest extent possible. *Force Majeure* includes an occurrence or nonoccurrence arising from causes beyond the control of and without the fault of Defendant, such as an act of God, untimely review of permit applications or submissions by EGLE or other applicable authority, and acts or omissions of third

parties that could not have been avoided or overcome by the diligence of Defendant and that delay the performance of an obligation under this Decree. *Force Majeure* does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of actions or omissions of Defendant.

13.3 Defendant shall notify EGLE by telephone within seventy-two (72) hours of discovering any event that causes a delay or prevents performance with any provision of this Decree. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay for each specific obligation that will be impacted by the delay; the cause or causes of delay; the measures taken by Defendant to prevent or minimize the delay; and the timetable by which those measures shall be implemented. Defendant shall use its best efforts to avoid or minimize any such delay.

13.4 Failure of Defendant to comply with the notice requirements of Paragraph 13.3 above shall render Section XIII (Force Majeure) of this Decree void and of no force and effect as to the particular incident involved. EGLE may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 13.3 of this Decree.

13.5 If the Parties agree that the delay or anticipated delay was beyond the control of Defendant, this may be so stipulated and the Parties may agree upon an appropriate modification of this Decree. If the Parties are unable to reach such

agreement, the dispute shall be resolved in accordance with Section XVIII (Dispute Resolution) of this Decree. The burden of proving that any delay was beyond the control of Defendant, and that all the requirements of this Section have been met by Defendant, is on Defendant.

13.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Defendant qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

XIV. RECORD RETENTION/ACCESS TO INFORMATION

14.1 Defendant shall preserve and retain, for a period of ten (10) years after completion of all response activities required under this Decree, including any operation and maintenance and long-term monitoring at the Work Areas within the Study Area, all records, sampling and test results, charts, and other documents relating to the release or threatened release of hazardous substances, and the storage, generation, disposal, treatment, and handling of hazardous substances at the Work Areas within the Study Area; and any other records that are maintained or generated pursuant to any requirement of this Decree, including records that are maintained or generated by representatives, consultants, or contractors of Defendant. Defendant shall obtain EGLE's written permission prior to the destruction of any documents covered by this Paragraph. Defendant's request shall be accompanied by a copy of this Decree and sent to the address listed in Section XV

(Project Managers and Communications/Notices) of this Decree, or to such other address as may subsequently be designated in writing by EGLE.

14.2 Upon request, Defendant shall provide to EGLE copies of all documents and information within its possession, or within the possession or control of its employees, contractors, agents, or representatives, relating to the performance of response activities or other requirements of this Decree including, but not limited to, records regarding the collection and analysis of samples, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing forms, or other correspondence, documents, or information related to response activities. Upon request Defendant shall also make available to EGLE, upon reasonable notice, Defendant's employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of response activities.

14.3 If Defendant submits documents or information to EGLE that Defendant believes are entitled to protection as provided for in MCL 324.20117(10) of the NREPA, Defendant may designate in that submission the documents or information which it believes are entitled to such protection. If no such designation accompanies the information when it is submitted to EGLE, EGLE may provide the information to the public without further notice to Defendant. Information described in MCL 324.20117(11)(a)-(h), shall not be claimed as confidential or privileged by Defendant. Information or data generated under this Decree shall not be subject to Part 148, Environmental Audit Privilege and Immunity, of the NREPA, MCL 324.14801 *et seq.*

14.4 Defendant retains the right to assert any privileges that may apply to documents subject to this Section XIV, Record Retention/Access to Information.

XV. PROJECT MANAGERS AND COMMUNICATIONS/NOTICES

15.1 Each Party shall designate one or more Project Managers. Whenever notices, progress reports, information on the collection and analysis of samples, sampling data, work plan and Response Activity Plan submissions, approvals, or disapprovals, or other technical submissions are required to be forwarded by one Party to the other Party under this Decree; or whenever other communications between the Parties are needed, such communications shall be directed to the designated Project Managers at the address listed below. Notices and submissions may be initially provided by electronic means but a hard copy must be concurrently sent. If any Party changes its designated Project Manager, the name, address, and telephone number of the successor shall be provided to the other Party, in writing, as soon as practicable.

The Project Manager for each Party shall have primary responsibility for overseeing the performance of the response activities within the Study Area and other requirements specified in this Decree.

(a) As to EGLE:

Emily Peabody, Project Manager
Lansing District
Remediation and Redevelopment Division
Michigan Department of Environment Great Lakes, and Energy
525 West Allegan

Lansing, Michigan 48933
Phone: 517-388-5719
E-mail Address: PeabodyE@Michigan.gov

(b) As to Defendant:

Wayne R. Amber, Ph.D.
Principal
Geosyntec Consultants, Inc.
2100 Commonwealth Blvd, Suite 100
Ann Arbor, Michigan 48105
Phone: 734.332.8004; Mobile: 734.660.9615
E-mail Address: WAmber@Geosyntec.com

With a copy to:

Ronald A. King
Clark Hill
215 South Washington Square, Suite 200
Lansing, MI 48933
Phone: 517.318.3015; Mobile: 517.449.2860
E-mail: rking@clarkhill.com

15.2 EGLE may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Decree.

XVI. PAYMENT OF COSTS

16.1 Within sixty (60) days after the Effective Date, Defendant shall pay one hundred seventy-five thousand dollars (\$175,000.00) to cover the State's litigation costs relating to this action. Payment shall be made to Joseph M. Callow,

Jr., Keating Muething & Klekamp, PLL, One East Fourth Street, Suite 1400, Cincinnati, Ohio 45202.

16.2 Within sixty (60) days after the Effective Date, Defendant shall pay \$2,400,000.00 to Plaintiffs' counsel for their reasonable attorneys' fees consistent with Part 201. Payment shall be made to Joseph M. Callow, Jr., Keating Muething & Klekamp, PLL, One East Fourth Street, Suite 1400, Cincinnati, Ohio 45202.

16.3 Within sixty (60) days after the Effective Date, Defendant shall pay the State sixty-three thousand six hundred eighty-six Dollars and thirty-three Cents (\$63,686.33) for all Past Response Activity Costs. Payment shall be made as set forth in Paragraph 16.6.

16.4 Defendant shall pay the State as follows for Future Response Activity Costs to be incurred by the State:

(a) Except as set forth in Paragraph (b) below, Defendant shall pay the State within sixty (60) days six hundred thousand dollars (\$600,000.00) to cover all of the State's Future Response Activity Costs except as provided in Paragraph 16.4(b). Payment shall be made as set forth in Paragraph 16.6.

(b) In addition to the amount set forth in Paragraph (a) above, Defendant shall be responsible for all Future Response Activity Costs EGGLE incurs under Section XVIII (Dispute Resolution), EGGLE's performance of

Response Activities under Paragraph 6.14 of this Decree, and any Response Activity Costs EGLE incurs to enforce this Decree.

16.5 Defendant shall reimburse the State for Future Response Activity Costs incurred by the State pursuant to Paragraph 16.4(b) as follows:

(a) Future Response Activity Costs incurred to enforce this Decree or incurred because the Dispute Resolution process in Section XVIII was invoked by a Party to this Decree, will periodically be invoiced to Defendant by the State.

(b) An invoice will include a summary report (Summary Report) that identifies the nature of those costs and the dates through which those costs were incurred by the State and a full and complete accounting, including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the State. Except as provided by Section XVIII (Dispute Resolution) of this Decree, Defendant shall reimburse the State for such costs within sixty (60) days of Defendant's receipt of an invoice from the State.

16.6 All payments made pursuant to Paragraphs 16.3 and 16.4 shall be by certified check, made payable to the "State of Michigan – Environmental Response Fund," and shall be sent to:

By first class mail:

Michigan Department of Environment, Great Lakes, and Energy
Cashier's Office
P.O. Box 30657

Lansing, Michigan 48909-8157

Via courier:

MDOT Accounting Services Division
Cashier's Office for EGLE
Van Wagoner Building, 1st Floor West
425 West Ottawa Street
Lansing, Michigan 48933

The Study Area, Court Case No. 20-30909-NZ, and the RRD Account Number **RRD50150** shall be designated on each check. A copy of the transmittal letter and the check shall be provided simultaneously to EGLE Project Manager at the address listed in Paragraph 15.1(a) and to the MDAG at:

Assistant in Charge
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General
G. Mennen Williams Building, 6th Floor
P.O. Box 30755
Lansing, Michigan 48909
Phone: 517-373-7540
Fax: 517-373-1610

Costs recovered pursuant to Paragraphs 16.3 and 16.5, and payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties) of this Decree shall be deposited into the Environmental Response Fund in accordance with the provisions of MCL 324.20108(2)–(4). Costs recovered pursuant to Paragraph 16.4 shall be deposited into a restricted subaccount in the Environmental Response Fund in accordance with the provisions of MCL 324.201082–4. The funds deposited into the subaccount shall be used by EGLE to pay costs of future response activities to be conducted by or for it and costs determined by EGLE to be necessary to

facilitate response activities to be conducted by or for it within the Study Area related to the Contaminants of Concern. If EGLE determines funds from paragraph 16.4 are not necessary after 30 years, then the funds can be released to the Environmental Response Fund.

16.7 If Defendant fails to make full payment to EGLE for Past Response Activity Costs or Future Response Activity Costs as specified in Paragraphs 16.3, 16.4, and 16.5 of this Decree, interest, at the rate specified in MCL 324.20126a(3), shall begin to accrue on the unpaid balance on the day after payment was due, until the date upon which Defendant makes full payment of those costs and the accrued interest to EGLE. In any challenge by Defendant to an EGLE demand for reimbursement of costs, Defendant shall have the burden of establishing that EGLE did not lawfully incur those costs in accordance with MCL 324.20126a(1)(a).

XVII. STIPULATED PENALTIES

17.1 Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 17.2 and 17.3 of this Decree, for failure to comply with the requirements of this Decree, unless excused under Section XIII (*Force Majeure*) of this Decree. "Failure to Comply" by Defendant shall include failure to complete Submissions and notifications as required by this Decree and failure to perform response activities in accordance with EGLE-approved Response Activity Plans, this Decree, and all applicable requirements of law, within the specified implementation schedules established by or approved under this Decree.

17.2 The following stipulated penalties shall accrue per violation per day for any violation of Section VI (Performance of Response Activities) of this Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1 st through 14 th day
\$750	15 th through 30 th day
\$1,500	31 st day and beyond

17.3 Except as provided in Paragraph 17.2, Section XIII (*Force Majeure*) and Section XVIII (Dispute Resolution) of this Decree, if Defendant fails or refuses to comply with any other term or condition of this Decree, Defendant shall pay the State stipulated penalties of two hundred and fifty Dollars (\$250) a day for each and every failure or refusal to comply.

17.4 All penalties shall begin to accrue on the day after performance of an activity was due or the day a violation occurs, and shall continue to accrue through the final day of completion of performance of the activity or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree.

17.5 Except as provided in Section XVIII (Dispute Resolution) of this Decree, Defendant shall pay stipulated penalties owed to the State no later than sixty (60) days after Defendant's receipt of a written demand from the State. Payment shall be made in the manner set forth in Paragraph 16.6 of Section XVI

(Payment of Costs). Interest, at the rate provided for in Section 20126a(3) of the NREPA, shall begin to accrue on the unpaid balance at the end of the sixty (60)-day period on the day after payment was due until the date upon which the Defendant makes full payment of those stipulated penalties and the accrued interest to the State. Failure to pay the stipulated penalties within sixty (60) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Decree.

17.6 The payment of stipulated penalties shall not alter in any way Defendant's obligation to perform the response activities required by this Decree.

17.7 If Defendant fails to pay stipulated penalties when due, the State may institute proceedings to collect the penalties. However, the assessment of stipulated penalties is not the State's exclusive remedy if Defendant violates this Decree. For any failure or refusal of Defendant to comply with the requirements of this Decree, the State also reserves the right to pursue any other remedies to which it is entitled under this Decree or any applicable law including, but not limited to, seeking civil fines, injunctive relief, and the specific performance of response activities and reimbursement of costs. If a court orders Defendant to pay the State civil fines or penalties under Part 201 for acts and/or omissions of Defendant for claims related to compliance with this Decree or a requirement in Section 107a (MCL 324.20107a) or Section 114 (MCL 324.20114) of Part 201 related to the Study Area, Defendant may deduct from the amount of fines or penalties ordered to be paid to the State the

amount of any stipulated penalties previously paid to the State for the same acts or omissions which were the basis for the civil fines or penalties ordered by the Court.

17.8 Notwithstanding any other provision of this Section, the State may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Decree.

XVIII. DISPUTE RESOLUTION

18.1 Unless otherwise expressly provided for in this Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Decree, including review and approval of a Response Activity Plan, except for Section XII (Emergency Response) of this Decree. However, the procedures set forth in this Section shall not apply to actions by the State to enforce any of Defendant's obligations that have not been disputed in accordance with this Section. Engagement of dispute resolution pursuant to this Section shall not be cause for Defendant to delay the performance of any response activity required under this Decree.

18.2 The State shall maintain an administrative record of any disputes initiated pursuant to this Section. The administrative record shall include the information Defendant provides to the State under Paragraphs 18.3 through 18.5 of this Decree, and any documents EGLE and the State rely on to make the decisions set forth in Paragraphs 18.3 through 18.5 of this Decree.

18.3 Except for undisputable matters identified in Paragraph 18.1 of this Decree, any dispute that arises under this Decree with respect to EGLE's disapproval, modification, or other decision concerning requirements of this Decree shall, in the first instance, be the subject of informal negotiations in good faith between the district staff representing EGLE and Defendant. A dispute shall be considered to have arisen on the date that a Party receives a written Notice of Dispute from the other Party. The Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. In the event Defendant objects to any EGLE notice of disapproval, modification, or decision concerning the requirements of this Decree that is subject to dispute under this Section, Defendant shall submit the Notice of Dispute within twenty (20) days of receipt of EGLE's notice of disapproval, modification, or decision. The period of informal negotiations shall not exceed thirty (30) days from the date a Party receives a Notice of Dispute, unless the time period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within thirty (30) days or within the agreed-upon time period, the RRD District Supervisor will thereafter provide EGLE's Statement of Position, in writing, to Defendant. In the absence of initiation of formal dispute resolution by Defendant under Paragraph 18.4 of this Decree, EGLE's position as set forth in EGLE's Statement of Position shall be binding on the Parties.

18.4 If Defendant and EGLE cannot informally resolve a dispute under Paragraph 18.3 of this Decree, Defendant may initiate formal dispute resolution by submitting a written Request for Review to the RRD Director, with a copy to EGLE Project Manager, requesting a review of the disputed issues. This Request for Review must be submitted within twenty (20) days of Defendant's receipt of the Statement of Position issued by EGLE pursuant to Paragraph 18.3 of this Decree. The Request for Review shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. Within twenty (20) days of the RRD Director's receipt of Defendant's Request for Review, the RRD Director will provide EGLE's Statement of Decision, in writing, to Defendant, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting his/her position; and supporting documentation he/she relied upon in making the decision. The time period for the RRD Director's review of the Request for Review may be extended by written agreement between the Parties. In the absence of an initiation of a motion for resolution of the dispute by Defendant under Paragraph 18.5 of this Decree, EGLE's Statement of Decision shall be binding on the Parties.

18.5 EGLE's Statement of Decision pursuant to Paragraph 18.4 shall control unless, within thirty (30) days after Defendant's receipt of EGLE's Statement of Decision, Defendant files with this Court a motion for resolution of the

dispute, which sets forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Decree. Within thirty (30) day of Defendant's filing of a motion asking the Court to resolve a dispute, the State will file with the Court the administrative record that is maintained pursuant to Paragraph 18.2 of this Decree.

18.6 Any judicial review of EGLE's Statement of Decision shall be limited to the administrative record. In proceedings on any dispute relating to the selection, extent, or adequacy of any aspect of the response activities that are subject of this Decree, Defendant shall have the burden of demonstrating on the administrative record that the position of EGLE is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute, Defendant shall bear the burden of persuasion on factual issues under the applicable standards of review. Nothing herein shall prevent the State from arguing that the Court should apply the arbitrary and capricious standard of review to any dispute under this Decree.

18.7 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of Defendant's failure or refusal to comply with any term or condition of this Decree, but payment shall be stayed pending resolution of the dispute. In the event, and to the extent that Defendant does not prevail on the disputed matters, the State may demand payment of stipulated penalties and Defendant shall pay stipulated penalties as set forth in Paragraph 17.5 of Section XVII (Stipulated Penalties) of this Decree. Defendant

shall not be assessed stipulated penalties for disputes that are resolved in their favor. The MDAG may take civil enforcement action against Defendant to seek the assessment of civil penalties or damages, pursuant to MCL 324.20137(1), or other statutory and equitable authorities. Defendant may deduct the amount of stipulated penalties previously paid to the State under the terms of Section XVII (Stipulated Penalties) from an amount awarded pursuant to MCL 324.20137(1) to the extent the stipulated penalties were assessed for the same acts or omissions which provided the basis for the civil fines or penalties ordered by a Court.

18.9 Notwithstanding the provisions of this Section and in accordance with Section XVI (Payment of Costs) of this Decree, and Section XVII (Stipulated Penalties) of this Decree, Defendant shall pay to EGLE that portion of a demand for reimbursement of costs or for payment of stipulated penalties that is not the subject of an ongoing dispute resolution proceeding.

18.10 As provided for in MCL 324.20137(6), no action or decision of EGLE or the MDAG shall constitute a final agency action giving rise to any rights of judicial review prior to the MDAG's initiation of judicial action to compel Defendant to comply with this Decree or to enforce a term, condition, or other action required by this Decree. Nothing in this Decree shall expand Defendant's ability to obtain pre-enforcement review of this Decree.

XIX. INDEMNIFICATION AND INSURANCE

19.1 The State does not assume any liability by entering into this Decree.

This Decree shall not be construed to be an indemnity by the State for the benefit of Defendant or any other person.

19.2 Defendant shall indemnify and hold harmless the State and its departments, agencies, officials, agents, employees, contractors, and representatives for any claims or causes of action that arise from, or on account of, acts or omissions of Defendant, its officers, employees, agents, or any other person acting on its behalf or under its control, in performing the activities required by this Decree.

19.3 Defendant shall indemnify and hold harmless the State and its departments, agencies, officials, agents, employees, contractors, and representatives for all claims or causes of action for damages or reimbursement from the State that arise from, or on account of, any contract, agreement, or arrangement between Defendant and any person for the performance of response activities within the Study Area, including any claims on account of construction delays.

19.4 The State shall provide Defendant notice of any claim within sixty (60) days of receiving that claim for which the State intends to seek indemnification pursuant to Paragraphs 19.2 or 19.3 of this Decree.

19.5 Neither the State nor any of its departments, agencies, officials, agents, employees, contractors, or representatives shall be considered a party to any contract that is entered into by or on behalf of Defendant for the performance of

activities required by this Decree. Neither Defendant nor its contractor shall be considered an agent of the State.

19.6 Defendant waives all claims or causes of action against the State and its departments, agencies, officials, agents, employees, contractors, and representatives for damages, reimbursement, or set-off of any payments made or to be made to the State that arise from, or on account of, any contract, agreement, or arrangement between Defendant and any other person for the performance of response activities within the Study Area, including any claims resulting from construction delays.

19.7 Prior to commencing any response activities pursuant to this Decree, and for the duration of this Decree, Defendant shall secure and maintain comprehensive general liability insurance with limits of One Million Dollars (\$1,000,000.00) of combined single limit, which names EGLE, the MDAG, and the State of Michigan as additional insured parties. If Defendant demonstrates by evidence satisfactory to EGLE that any contractor or subcontractor maintains insurance equivalent to that described above, then, with respect to that contractor or subcontractor, Defendant needs to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the insurance method used by Defendant and prior to commencement of response activities pursuant to this Decree, Defendant shall provide EGLE Project Manager and the MDAG with certificates evidencing said insurance and EGLE, the MDAG, and the State of Michigan's status as additional

insured parties. Such certificates shall specify the Study Area, Court Case No. 20-30909-NZ and the Remediation and Redevelopment Division.

XX. COVENANTS NOT TO SUE BY THE STATE

20.1 In consideration of the actions that will be performed and the payments that will be made by Defendant under the terms of this Decree, and except as specifically provided for in this Section and Section XXI (Reservation of Rights by the State) of this Decree, the State hereby covenants not to sue or to take further administrative action against Defendant for:

- (a) Liability under any common law theory associated with the Contaminants of Concern in the Study Area.
- (b) Liability under Parts 17 and 31 of the NREPA, MCL 324.1701 *et seq* and MCL 324.3101 *et seq.* associated with the Contaminants of Concern in the Study Area.
- (c) Liability under Part 201 for response activities associated with Contaminants of Concern that Defendant performs pursuant to EGLE-approved Response Activity Plans under this Consent Decree.
- (d) Recovery of Litigation Costs, Attorney Fees, and Past Response Activity Costs that Defendant has paid as set forth in Section XVI (Payment of Costs) of this Decree.

(e) Recovery of Future Response Activity Costs that Defendant has paid as set forth in Section XVI (Payment of Costs), and any applicable interest, of this Decree.

20.2 The covenants not to sue shall take effect under this Decree as follows:

(a) With respect to Defendant's liability for common law claims and claims under Parts 17 and 31 of the NREPA, on the Effective Date of the Decree.

(b) With respect to liability under Part 201 for response activities performed in compliance with EGLE approved Response Activity Plans under this Decree, the covenant not to sue shall take effect upon EGLE's approval of the Achievement Report submitted pursuant to Section VI (Performance of Response Activities) of this Decree.

(c) With respect to Defendant's liability for Litigation Costs, Attorneys' Fees, Past Response Activity Costs, and Future Response Activity Costs, the covenants not to sue shall take effect upon EGLE's receipt of payments for those costs, including any applicable interest that has accrued pursuant to Section XVI (Payment of Costs) of this Decree.

20.3 The covenants not to sue extend only to Defendant and do not extend to any other person.

XXI. RESERVATION OF RIGHTS BY THE STATE

21.1 The covenants not to sue apply only to those matters specified in Paragraph 20.1 of Section XX (Covenants Not to Sue by the State) of this Decree. The State expressly reserves, and this Decree is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against Defendant with respect to the following:

(a) The performance of response activities that are required to comply with Part 201 and to achieve and maintain the performance objectives specified in Paragraph 6.1 of Section VI (Performance of Response Activities) of this Decree.

(b) Past Response Activity Costs, and Future Response Activity Costs incurred or to be incurred by the State that Defendant has not paid pursuant to this Decree.

(c) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances that occur outside of the Study Area and that are not attributable to the Study Area.

(d) The transportation, treatment, storage, or disposal or arrangement for transportation, treatment, storage, or disposal of hazardous substances at or in connection with the Property other than as provided by under this Decree or in a Response Activity Plan approved by EGGLE under this Decree.

(e) Damages for injury to, destruction of, or loss of natural resources, and the costs for any natural resource damage assessment.

(f) Criminal acts.

(g) Any matters for which the State is owed indemnification under Section XIX (Indemnification and Insurance) of this Decree.

(h) The release or threatened release of hazardous substances that occur during or after the performance of response activities required by this Decree or any other violations of state or federal law for which Defendant has not received a covenant not to sue.

(h) Any issue addressed in MCL 324.20132(6) as it relates to unknown conditions within the Study Area.

21.2 The State reserves the right to take action against Defendant if it discovers at any time that any material information provided by Defendant prior to or after entry of this Decree was false or misleading.

21.3 The State, including EGLE and the MDAG, expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Decree.

21.4 In addition to, and not as a limitation of any other provision of this Decree, EGLE retains all of its authority and reserves all of its rights to perform, or

contract to have performed, any response activities that EGLE determines are necessary.

21.5 In addition to, and not as a limitation of any provision of this Decree, the State, including EGLE and the MDAG, retain all of their information-gathering, inspection, access, and enforcement authorities and rights under Part 201, and any other applicable statute or regulation.

21.6 Failure by EGLE or the MDAG to enforce any term, condition, or requirement of this Decree in a timely manner shall not:

(a) Provide or be construed to provide a defense for Defendant's noncompliance with any such term, condition, or requirement of this Decree.

(b) Estop or limit the authority of EGLE or the MDAG to enforce any such term, condition, or requirement of the Decree, or to seek any other remedy provided by law.

21.7 This Decree does not constitute a warranty or representation of any kind by EGLE that the response activities performed by Defendant in accordance with EGLE-approved Response Activity Plans required by this Decree will result in the achievement of the performance objectives stated in Paragraph 6.1 of Section VI (Performance of Response Activities) of this Decree; or the remedial clean-up criteria established by law, or that those response activities will assure protection of public health, safety, or welfare, or the environment.

21.8 Except as provided in Paragraph 20.1(a) of Section XX (Covenants Not to Sue by the State), nothing in this Decree shall limit the power and authority of EGLE or the State, pursuant to MCL 324.20119 and MCL 324.20137, as provided for under MCL 324.20132(8), to direct or Decree all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants within the Study Area.

XXII. COVENANT NOT TO SUE BY DEFENDANT

22.1 Defendant hereby covenants not to sue or to take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives, for any claims or causes of action against the State that arise from this Decree (other than resolution of disputes pursuant to Section XVIII (Dispute Resolution), including, but not limited to, any claims challenging the State's authority to bring these claims or to secure the relief set forth in this Decree; any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to MCL 324.20119(5); or any other provision of law.

22.2 After the Effective Date, if the MDAG initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Study Area, Defendant agrees not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, or claim-splitting; or that are based upon a defense that contends any claims raised by EGLE or the MDAG in

such a proceeding were or should have been brought in this case or that EGLE failed to meet the requirements of MCL 324.1501 *et seq.* in bringing this action; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XX (Covenants Not to Sue by the State) of this Decree.

XXIII. CONTRIBUTION PROTECTION

Pursuant to MCL 324.20129(5), and Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended (CERCLA), 42 USC Section 9613(f)(2); and to the extent provided in Section XX (Covenants Not to Sue by the State) of this Decree, Defendant shall not be liable for claims for contribution for the matters set forth in Paragraph 20.1 of Section XX (Covenants Not to Sue by the State) of this Decree, to the extent allowable by law. The Parties agree that entry of this Decree constitutes an administratively approved settlement for purposes of Section 113(f)(3)(B) of the CERCLA, 42 USC 9613(f)(3)(B), pursuant to which Defendant has, as of the Effective Date, resolved its liability to EGLE for the matters set forth in Paragraph 20.1 of this Decree. Entry of this Decree does not discharge the liability of any other person that may be liable under MCL 324.20126 of the NREPA, or Section 9607 and Section 9613 of the CERCLA. Pursuant to MCL 324.20129(9) of the NREPA, any action by Defendant for contribution from any person that is not a

Party to this Decree shall be subordinate to the rights of the State, if the State files an action pursuant to the NREPA or other applicable state or federal law.

XXIV. MODIFICATIONS

24.1 The Parties may only modify this Decree according to the terms of this Section. The modification by Defendant of any Submission or schedule required by this Decree may be made only upon written approval from the RRD District Supervisor.

24.2 Modification of any other provision of this Decree shall be made only by written agreement between Defendant's Project Manager, the RRD Director, or his or her authorized representative, and the designated representative of the MDAG and Defendant.

XXV. SEPARATE DOCUMENTS

The Parties may execute this Decree in duplicate original form for the primary purpose of obtaining multiple signatures, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

XXVI. INTEGRATION

This Decree and its required Submissions constitute the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Decree.

XXVII. FINAL JUDGMENT

27.1 This Decree and its attachments constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Decree.

27.2 Upon entry of this Decree by the Court, this Decree shall constitute a final judgment between and among the Parties. The Court enters this judgment as a final judgment under MCR 2.602(A)(3).

THIS IS A FINAL ORDER THAT RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE.

SO ORDERED THIS ___ DAY OF ___, 2023.

HON. MICHAEL P. HATTY

Court Case No. 20-30909-NZ

IT IS SO AGREED BY:

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

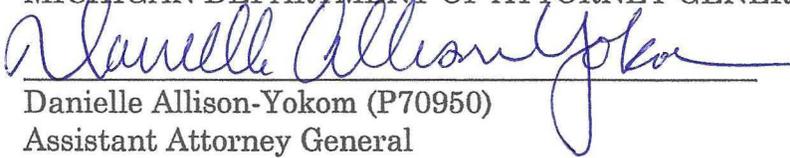


Daniel Eichinger, Acting Director
Michigan Department of Environment, Great Lakes,
and Energy

1/12/23

Date

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL



Danielle Allison-Yokom (P70950)
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

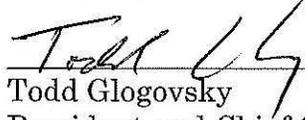
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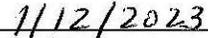
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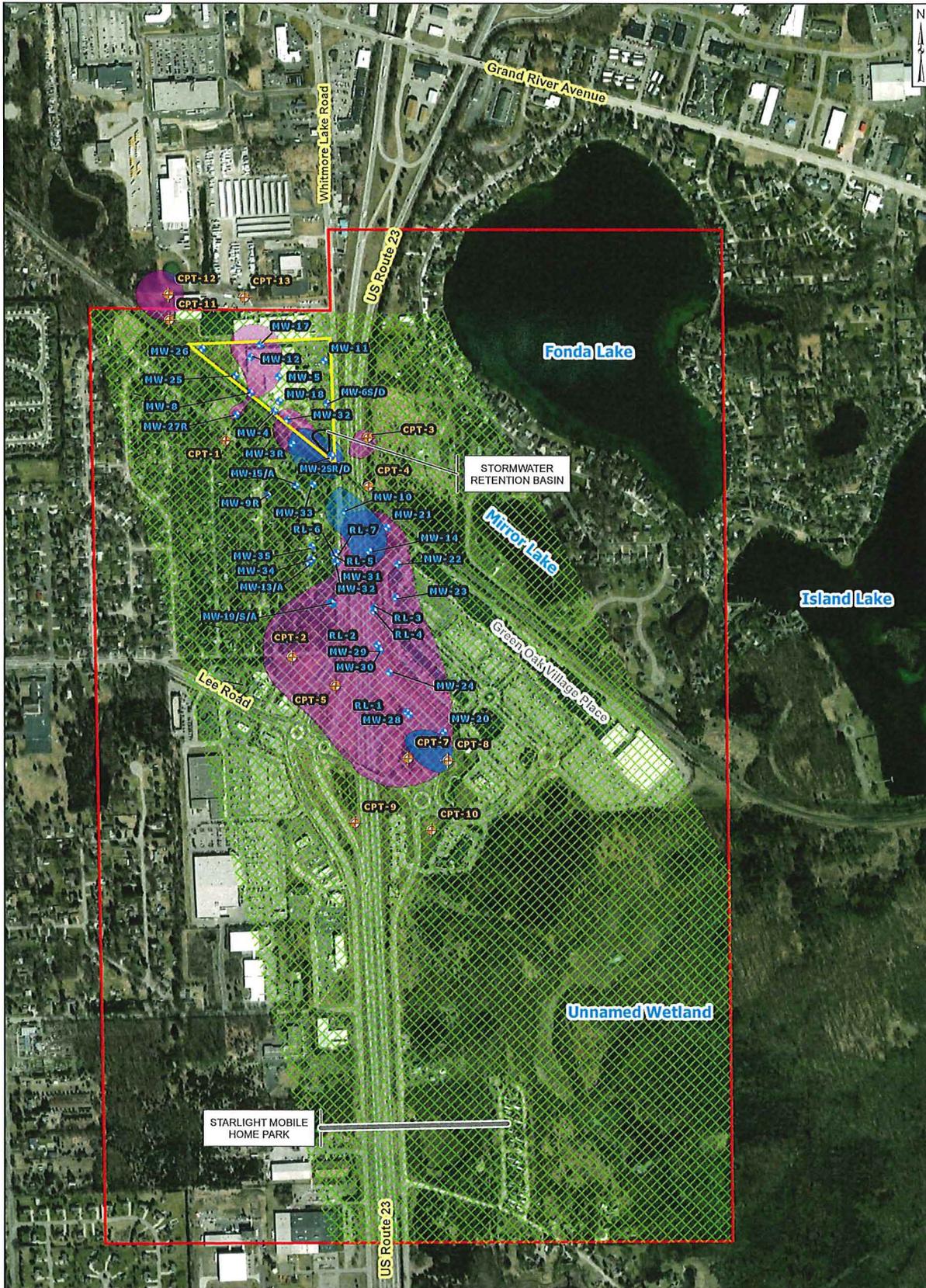
Defendant



Todd Glogovsky
President and Chief Operating Officer
Asahi Kasei Plastics North America, Inc.,



Date



Legend Monitoring Well Location CPT Location Initial Groundwater Delineation Area "Study Area"		Groundwater PFOA Plume based on Geosyntec-collected groundwater data in 2022 Groundwater PFOS Plume based on Geosyntec-collected groundwater data in 2022	Notes - Basemap provided by Maxar and dated March 2019. - Groundwater plumes generated in Earth Volumetric Studio. - Locations are approximate. - Plume extents shown are based on current understanding of concentrations above EGLE Drinking Water Criteria. - PFOS: Perfluorooctanesulfonic Acid. - PFOA: Perfluorooctanoic Acid. - CPT: Cone Penetration Test.	
Conceptual Plume Delineation Area Study Area Brighton, MI 48116				Exhibit A
Ann Arbor, Michigan		2022/10/11		