

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

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

Plaintiffs,

v

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

and

FKI INDUSTRIES, INC.,

Defendants.

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CASE NO. 2022-09032-CE

HON. GEORGE JAY QUIST

**CONSENT DECREE**

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## ATTACHMENTS

Attachment A – Godfrey Site Map

Attachment B – Godfrey Offsite Investigation Area

Attachment C – 32nd Street Site Map

Attachment D – Stevens Street Site Map

Attachment E – Hall Street Site Map

Attachment F – Defendant Releasees

## CONSENT DECREE

This Consent Decree (Decree) is entered by and between Plaintiffs, Attorney General Dana Nessel, on behalf of the People of the State of Michigan, and the State of Michigan (collectively the State); and Defendants, FKI Hardware, Inc., and FKI Industries Inc. (collectively Defendants) (together, the Parties) pursuant to the authority vested in the Michigan Department of Attorney General and the State by Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.*

This Decree sets forth the settlement following Mediation between the State and Defendants for Defendants' liability under Part 201 related to certain properties in west Michigan. The State filed a Complaint alleging that Defendants' ownership and operation of industrial sites at nine different locations in West Michigan resulted in releases or suspected releases of hazardous substances, including but not limited to trichloroethylene (TCE) and per- and polyfluoroalkyl substances (PFAS), into the environment. The State's Complaint alleged that contamination at one of these properties poses an imminent and substantial endangerment to the public health, safety, welfare, and the environment and requires immediate remediation and other Response Activities to abate the hazards Defendants have created.

The State's Complaint alleged claims under Part 201 based on Defendants' responsibility for "releases," as defined in Section 20101(1)(pp) of the NREPA, MCL 324.20101(1)(pp), that resulted in exceedances of Michigan's cleanup criteria for TCE, PFAS, and other hazardous substances. The State sought declaratory and injunctive relief, including a determination that Defendants are responsible for Response Activities to address the releases at all nine sites; an order that Defendants must pay the State's past and future Response Activity Costs, including costs for oversight, surveillance and performance of Response Activities; an order requiring protective measures to prevent endangerment of human health and the environment based on EGLE-developed site-specific volatilization to indoor air criteria; payment of natural resource damages; and imposition of a civil fine.

In full and final settlement of the State's Complaint and the relief sought therein, this Decree requires Defendants to undertake the Response Activities described herein relating to the 32nd Street Site, the Godfrey Site, the Hall Street Site, and the Stevens Street Site (collectively, the Sites), as defined below in Section IV (Definitions), and to pay the State's past and future Response Activity Costs and the State's litigation costs and attorneys' fees. The Parties agree, and the Court by entering this Decree finds, that the Decree is necessary to abate the release or threatened release of hazardous substances, contaminants and wastes into the environment, to control future releases, and to protect public health, safety, and welfare, and the environment with respect to Defendants' alleged releases or threatened releases at the Sites.

The execution of this Decree by Defendants is for settlement purposes only and is neither an admission, nor denial, of liability with respect to any issue dealt with in this Decree nor an admission, nor denial, 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 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. Venue is proper in this Court, because Defendants owned and operated properties in Kent County that are the subject of this lawsuit and therefore the causes of action arose in Kent County.

1.2 The Court determines that the terms and conditions of this Decree are fair, reasonable, adequately resolve the environmental issues raised; are 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 Defendants may not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

## **II. PARTIES BOUND**

2.1 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).

2.2 The Defendants are FKI Hardware, Inc., f/k/a Hickory Hardware, Inc., f/k/a Belwith International, Ltd., f/k/a Keeler Brass Company, a California corporation with its principal place of business in Tulsa, Oklahoma, and FKI Industries, Inc., a New York corporation with its principal place of business in Tulsa, Oklahoma (collectively, the Defendants).

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



2.4 Notwithstanding the terms of any contract that Defendants may enter with respect to the performance of Response Activities pursuant to this Decree, Defendants are responsible for compliance with the terms of this Decree and shall ensure that their contractors, subcontractors, laboratories, and consultants perform all Response Activities in conformance with the terms and conditions of this Decree.

2.5 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 Facilitate the continued performance of Response Activities, including those required under this Decree;

3.2 Ensure the Defendants will perform the Response Activities required by this Decree;

3.3 Require Defendants to develop and implement Response Activity Plans as prescribed in this Decree;

3.4 Provide for the Defendants' reimbursement of the State's litigation costs and attorneys' fees, and Future Response Activity Costs in accordance with Section XVI (Payment of Costs);

3.5 Resolve all claims that were alleged by the State in the Complaint, except as expressly specified in Sections XXII (Reservation of Rights by the State) and XXIII (Covenant Not to Sue by Defendant), related to or arising from the

release or threatened release of hazardous substances at, to, or from the Sites or the Non-Work Sites; and

3.6 Serve the public interest and minimize litigation.

#### **IV. DEFINITIONS**

4.1 “32nd Street Site” means the property located at 2929 32nd Street SE in Kentwood, Michigan, as more fully described in Attachment C.

4.2 “Complaint” means the State’s Amended Complaint filed in the above-captioned lawsuit on January 18, 2024.

4.2 “Day” or “days” 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 “Defendants” means FKI Hardware, Inc., f/k/a Hickory Hardware, Inc., f/k/a Belwith International, Ltd., f/k/a Keeler Brass Company, a California corporation with its principal place of business in Tulsa, Oklahoma, and FKI Industries, Inc., a New York corporation with its principal place of business in Tulsa, Oklahoma.

4.5 “Defendant Releasees” are Defendants’ affiliates, parents, subsidiaries, successors, assigns and all related entities that are specifically identified in Attachment F.

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

4.8 “FAM” means the financial assurance mechanism as defined in MCL 324.20101(1)(u) and that is provided pursuant to Section VII (Financial Assurance) of this Decree, to pay for all ongoing and long-term 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.

4.9 “Future Oversight Costs” means all costs incurred by the State after the Effective Date to oversee, monitor, and document compliance with this Decree. Future Oversight Costs include the State’s costs to monitor Response Activities at the Sites, 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, and prepare and review cost reimbursement documentation. Future Oversight Costs include State contractor costs to conduct these oversight activities.

4.10 “Future Response Activity Costs” means costs that are response activity costs under MCL 324.20101(1)(ww) and (i) are incurred by the State after the Effective Date to perform Response Activities pursuant to Paragraph 6.17 (EGLE’s Performance of Response Activities) and Section XII (Emergency Response) or (ii) are incurred by the State after the Effective Date in dispute resolution under

Section XVIII in which the State prevails or to enforce this Decree. Future Response Activity Costs include any State contractor costs incurred to complete these activities.

4.11 “Godfrey Site” means the property located at 945 and 955 Godfrey Avenue SW in Grand Rapids, Michigan, as more fully described in Attachment A.

4.12 “Hall Street Site” means the property located at 835 Hall Street SW in Grand Rapids, Michigan, as more fully described in Attachment E.

4.13 “Non-Work Sites” means the five sites identified in the State’s Complaint for which work will not be performed under this Decree, which are 311 N. Centennial Street, Zeeland, Michigan 49464; 39 State Street, Middleville, Michigan 49333; 3100 Broadway Avenue, Grandville, Michigan 49418 (also in EGLE records as 4300 Ferry Street SW); 609 Tupper Lake Street, Lake Odessa, Michigan 48849 (also in EGLE records as 1315 Hancock Street); and 157 W. Beech Street NE, Cedar Springs, Michigan 49319.

4.14 “Part 201” means Part 201, Environmental Remediation, of the NREPA, MCL 324.20101 *et seq.*, and the Part 201 Rules.

4.15 “Part 201 Rules” means the administrative rules promulgated under Part 201.

4.16 “Party” means the Defendants or the State. “Parties” means the Defendants and the State.

4.17 “Past Response Activity Costs” means all costs the State incurred before the Effective Date, including all response activity costs within the meaning of

MCL 324.20101(1)(ww), related to the release or threatened release of hazardous substances at, to, or from the Sites or the Non-Work Sites.

4.17 “Remedial Action” or “Remedial Actions” includes, but is not limited to, cleanup, removal, containment, isolation, destruction, or treatment of a hazardous substance released or threatened to be released into the environment, monitoring, maintenance, or the taking of other actions that may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment.

4.18 “Response Activities” or “Response Activity” means evaluation, interim response activity, Remedial Action, demolition, providing an alternative water supply, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. Response Activity also includes health assessments or health effect studies carried out under the supervision, or with the approval of, the department of community health and enforcement actions related to any Response Activity.

4.19 “Response Activity Plan” means, as defined in MCL 324.20101(1)(xx), 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) A feasibility study; or
- (d) A Remedial Action plan.

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

4.21 “Sites” means the 32nd Street Site, the Godfrey Site, the Hall Street Site, and the Stevens Street Site.

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

4.23 “Stevens Street Site” means the property located at 236 Stevens Street SW in Grand Rapids, Michigan, as more fully described in Attachment D.

4.24 Unless otherwise stated herein, all other terms used in this Decree, which are defined in Part 3, Definitions, of the NREPA or Part 201, shall have the same meaning in this Decree as in Part 3 or 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 Defendants or Defendant Releasees of their obligations to obtain and maintain compliance with permits.

## **VI. PERFORMANCE OF RESPONSE ACTIVITIES**

### **6.1 Performance Objectives**

Defendants shall perform Response Activities relating to the Sites as described in this Decree in a manner that complies with the requirements of Part 201, including but not limited to the actions in MCL 324.20114(1)(h)(i)–(vii), and to meet the following performance objectives:

(a) To the extent that Defendants are the owner or operator of part or all of any of the Sites, achieve and maintain compliance with MCL 324.20107a(1) and the Part 201 Rules.

(b) Prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment as necessary prior to the implementation of Remedial Action.

(c) Assess Site conditions, in order to select an appropriate Remedial Action that adequately addresses those conditions by identifying the source or sources of any contamination and defining the nature and extent of the contamination, as set forth in this Decree, in compliance with the requirements of Part 201.

(d) Satisfy and maintain compliance with the appropriate cleanup criteria as established under MCL 324.20120a or MCL 324.20120b as set forth in this Decree.

(e) Unless otherwise stated in this Decree, 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) Assure the ongoing effectiveness and integrity of the Remedial Actions specified by or approved under this Decree.

6.2 In accordance with this Decree, Defendants 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). Defendants 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 30 days of the Effective Date of this Decree, Defendants 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. Defendants agree 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) Defendants agree 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.” Defendants agree 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. Defendants agree to comply with the above documents or documents that supersede or amend these documents, and may utilize other methods demonstrated by Defendants to be appropriate as approved by EGLE.

#### **6.4 Health and Safety Plan (HASP)**

Within 60 days of the Effective Date of this Decree, Defendants 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 Defendants 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 14 days of the Effective Date of this Decree, Defendants shall submit notices of migration, as described in MCL 324.20114(1)(b)(ii), to EGLE and owners of properties where there is reason to believe that one or more hazardous substances emanating from the Godfrey Site or the 32nd Street Site are present. If based on future results of the remedial investigation conducted pursuant to this Decree there is reason to believe that one or more hazardous substances emanating from the Godfrey Site or the 32nd Street Site are present at additional properties, Defendants shall submit notices of migration, as described in MCL 324.20114(1)(b)(ii), to EGLE and owners of such properties. Those notices shall be provided within 30 days after obtaining knowledge that there is reason to believe that one or more hazardous substances emanating from the Godfrey Site or the 32nd Street Site are present at such properties.

## **6.6 Documentation of Compliance with Section 20107a of the NREPA**

To the extent that the Defendants own or operate a part or all of the Sites, the Defendants shall maintain and upon EGLE's request, submit documentation to EGLE within 30 days of such request, that summarizes the actions the Defendants have taken or are taking to comply with Section 20107a of the NREPA and the Part 201 Rules. Defendants' failure to comply with the requirements of this paragraph, Section 20107a of the NREPA, or the Part 201 Rules shall constitute a violation of this Decree and shall be subject to the provisions of Section XVII

(Stipulated Penalties) of this Decree. Defendants shall not be deemed to be an “operator” of any property by virtue of Defendants’ inspection, investigation, removal, monitoring, or performance of any other Response Activity or action pursuant to this Decree at such non-owned property, including without limitation the installation, operation, repair, or maintenance of any temporary or long-term alternative water supply, or any component thereof, at such non-owned property.

### **6.7 Godfrey Site Response Activities**

(a) Within 60 days of the Effective Date, Defendants shall begin an evaluation of sub-slab soil gas under any occupiable structure on 945 Godfrey Ave. SW, Grand Rapids, MI 49503 (Parcel #41-13-36-306-003) and the 955 Godfrey Ave. SW, Grand Rapids, MI 49503 (Parcel # 41-13-36-304-038) properties at the Godfrey Site and complete the evaluation on a timeline submitted to EGLE no later than 60 days after the Effective Date and approved by EGLE. Access to these properties has been granted to Defendants in the Declaration of Restrictive Covenant filed with the Kent County Register of Deeds (#20070731-0075896).

(b) Within 45 days of the Effective Date, Defendants shall submit to EGLE a completed *Site-Specific Volatilization to Indoor Air Criteria and Site-Specific Target Levels Request Forms* (Form EQP4467) with the required documentation of site conditions for each building on the 855 Godfrey property and 1035 Godfrey property for EGLE’s review and approval. EGLE will use the information on the approved Form EQP4467 submittals to develop Site-Specific Volatilization to Indoor Air Criteria.

(c) Within 90 days of the Effective Date, Defendants shall begin an evaluation of sub-slab soil gas under any occupiable structure on the property located at 855 Godfrey Avenue SW in Grand Rapids, Michigan (Parcel #41-13-36-308-002) and the property located at 1035 Godfrey Avenue SW in Grand Rapids, Michigan (Parcel #41-13-36-306-002) and complete the evaluation on a timeline submitted to EGLE no later than 60 days after the Effective Date and approved by EGLE.

(d) For the sub-slab investigations required by 6.7(a)–(c), Defendants shall, at a minimum, complete the following:

(i) Installation of Sub-Slab Vapor Pins. Sub-slab vapor pins shall be installed in a manner consistent with Appendix F.2: *Installation of Sub-Slab Soil Gas Probe/Vapor Monitoring Point to Support Vapor Intrusion Investigations*, of the May 2013 RRD Guidance Document for the Vapor Intrusion Pathway, as amended (2013 VI Guidance), or an EGLE-approved equivalent procedure. The number of sub-slab vapor pins installed shall be either (1) consistent with Table 5-2: Sampling Density in Commercial Buildings (revised January 10, 2020) of the 2013 VI Guidance or (2) an EGLE-approved number of sub-slab vapor pins.

(ii) Sample Collection from the Sub-Slab Vapor Pins. Each sub-slab vapor pin installed shall be sampled in a manner consistent with Appendix F.3: *Sampling Utilizing USEPA Method TO-15 via Bottle Vac to Support Vapor Intrusion Investigations*, of the VI Guidance, or EGLE-approved equivalent method.

Defendants may use a laboratory supplied “summa canister” in place of a Bottle Vac. All samples shall be analyzed by an independent and accredited environmental laboratory using U.S. EPA Method TO-15: *Determination of VOCs in Air Collected in Specialty-Prepared Canisters and Analyzed by Gas Chromatography/Mass Spectrometry (GC/MS)*.

(iii) Review of Analytical Results. All analytical results must be tabulated and compared to the EGLE-developed Site-Specific Volatilization to Indoor Air Criteria. Results for the 945 and 955 Godfrey properties shall be compared to the Site-Specific Volatilization to Indoor Air Criteria which were provided to Defendants on December 20, 2018. Results for the 855 and 1035 Godfrey properties shall be compared to the Site-Specific Volatilization to Indoor Air Criteria developed by EGLE pursuant to Paragraph 6.7(b). Defendants shall provide EGLE with the laboratory analytical results within one business day of receiving analytical results from the laboratory. Defendants shall provide EGLE with the comparison tables within three business days of receiving analytical results from the laboratory.

(e) To address concentrations of hazardous substances present in sub-slab soil gas at all existing buildings or portions of buildings that exceed the EGLE-developed Site-Specific Volatilization to Indoor Air Criteria, Defendants shall:

(i) Submit a proposed Response Activity Plan outlining options for interim response activities for mitigation of unacceptable exposure to

hazardous substances via the volatilization to indoor air inhalation pathway to EGLE for review and approval, no later than 45 days after the Effective Date.

(ii) Within three business days of receiving analytical results from the laboratory indicating the potential for unacceptable exposure to hazardous substances via the volatilization to indoor air pathway, begin implementing one or more of the approved interim response activities from the approved Response Activity Plan under Paragraph 6.7(e)(i). The interim Response Activities will require verification sampling and will be subject to EGLE review to determine adequacy. If EGLE determines the interim response activities did not adequately mitigate the potential for unacceptable exposure to hazardous substances via the volatilization to indoor air inhalation pathway, Defendants shall submit for EGLE review and approval a revised Response Activity Plan.

(iii) Within 60 days of receiving analytical results from the laboratory, submit to EGLE for its review and approval a Response Activity Plan for Remedial Action, with an implementation schedule, to permanently mitigate the potential for unacceptable exposure to hazardous substances via the volatilization to indoor air inhalation pathway.

(f) Within 180 days of the Effective Date, Defendants shall submit to EGLE for EGLE's review and approval a Response Activity Plan to (1) determine the nature and extent, both vertical and horizontal, of per- and polyfluoroalkyl substances (PFAS) in groundwater that exceed generic residential groundwater cleanup criteria and that EGLE determines to likely be attributable to releases

from Defendants' former operations at the Godfrey Site; and (2) determine the nature and extent, both vertical and horizontal, of volatile organic compounds (VOCs) in groundwater that exceed generic residential groundwater cleanup criteria and VOCs in soil gas that exceed the unrestricted residential Site-Specific Volatilization to Indoor Air Criteria developed by EGLE and that EGLE determines to likely be attributable to releases from Defendants' former operations at the Godfrey Site.

(i) Defendants' investigation of PFAS and VOCs under this Paragraph 6.7(f) shall be both onsite and offsite, however, the offsite investigation shall be bounded by the centerline of Curve Street to the south, the centerline of Underhill Avenue to the east, the centerline of Norwich Street to the west, and a line extending east and west along and from the northern boundary of the property located at 837 Godfrey Avenue to the north as shown in Attachment B.

(g) Defendants shall conduct a complete pathway analysis for VOCs in groundwater and soil gas and PFAS in groundwater based upon the information collected in the investigation required in Paragraph 6.7(f). Defendants shall submit this analysis to EGLE for its review and approval within 30 days of completion of the investigation work under Subparagraph 6.7(f).

(h) If the evaluation conducted pursuant to Subparagraph 6.7(f) finds soil gas concentrations that exceed the applicable Site-Specific Volatilization to Indoor Air Criteria developed by EGLE pursuant to Paragraph 6.7(b) within the lateral inclusion zone of any occupiable structure, Defendants shall submit to EGLE

within 30 days of Defendant's receipt of analytical data a Response Activity Plan to conduct sub-slab soil gas evaluation for the occupiable structure consistent with the requirements of paragraph 6.7(a)–(e). The lateral inclusion zone for petroleum VOCs shall be consistent with the *Precluding Factors Assessment for Petroleum Vapor Intrusion (PVI) Lateral Inclusion Zone* (EQP4470) and the lateral inclusion zone for chlorinated VOCs shall be a 100-foot radius consistent with the 2013 VI Guidance.

(i) For any vapor intrusion mitigation system installed pursuant to paragraph 6.7(e), Defendants shall submit to EGLE for its review and approval a Response Activity Plan for Remedial Action for operation and maintenance of the vapor intrusion mitigation system for each building that includes long-term operations, maintenance, and monitoring plans.

(j) For all complete pathways identified in paragraph 6.7(g) associated with VOCs in groundwater or soil gas and PFAS in groundwater, Defendants shall submit to EGLE for its review and approval a Response Activity Plan to conduct Remedial Actions or secure land or resource use restrictions consistent with Section 20121 of Part 201 necessary to address the complete pathways.

(k) At the conclusion of the activities required by paragraph 6.7(a)–(j), Defendants shall submit to EGLE for EGLE's review and approval a no further action report for PFAS in groundwater and VOCs in groundwater and soil gas. The no further action report must include:



(i) The basis for concluding that the Remedial Actions included in the no further action report are protective of the public health, safety, and welfare, and the environment with respect to PFAS in groundwater and VOCs in groundwater and soil gas at the entire investigation area as defined in Subparagraph 6.7(f)(i).

(ii) Any necessary postclosure plans, postclosure agreements, and financial assurance as specified in MCL 324.20114d.

**6.8 32nd Street Site Basal Clay and Lower Water Bearing Unit Investigation**

(a) Within 90 days of the Effective Date, Defendants shall use all available data to submit to EGLE maps and cross-sections that define the nature and thickness of the basal clay unit (Basal Clay Unit). The Basal Clay Unit is an area-wide clay aquitard that may represent the base of the shallow, unconfined water bearing aquifers.

(b) Within 180 days of the Effective Date, Defendants shall submit for EGLE review and approval a Response Activity Plan to conduct a preliminary investigation that will include the installation of monitoring wells in the aquifer below the Basal Clay Unit to assess groundwater quality with respect to VOCs, PFAS, and metals. This Response Activity Plan shall require:

(i) The installation of three monitoring wells, with one located on the north side of the 32nd Street Site and two outside of the known

plumes of contamination on the south side of the 32nd Street Site or in the 32nd Street right of way.

(ii) Appropriate installation to assure aquifer cross-contamination cannot occur.

(iii) Double-cased wells.

(c) Within 90 days of approval of the Response Activity Plan under Subparagraph 6.8(b), Defendants shall submit for EGLE review a Conceptual Site Model that reflects all information available to Defendants, including new information gathered in accordance with implementation of this Decree, and that determines whether the Basal Clay Unit protects the deep water aquifers from contamination located above or within the Basal Clay Unit.

#### **6.9 32nd Street Site Western Area of Concern Response Activities**

(a) Within 180 days of the Effective Date, Defendants shall submit to EGLE for its review and approval a Response Activity Plan to complete an investigation to delineate the horizontal and vertical extent of PFAS and metals (chromium, nickel, and zinc) in the groundwater to demonstrate that contamination does not extend to any deeper water bearing zones. If the investigation in Subparagraph 6.8 determines that the deeper water bearing zones are contaminated above applicable Part 201 criteria related to releases at the Site, Defendants shall delineate the horizontal and vertical extent of PFAS and metal contamination in the deeper water bearing zones. Defendants shall submit to

EGLE for its review and approval a report delineating the horizontal and vertical extent of PFAS and metals (chromium, nickel, and zinc) in the groundwater.

(b) Within 120 days of approval of the Response Activity Plan under Subparagraph 6.9(a), Defendants shall complete a comprehensive receptor evaluation and shall submit to EGLE for its review and approval a Response Activity Plan to address, manage, and mitigate any receptors that the investigation identifies.

(c) Within 365 days of the Effective Date, Defendants shall submit to EGLE for its review and approval a report that contains an evaluation of the effectiveness of the current trench systems and, if determined ineffective, a feasibility study of treatment alternatives. After approval by EGLE, Defendants shall submit to EGLE for its review and approval a Response Activity Plan for Remedial Action that selects a remedy and provides a plan and schedule for its implementation. Any proposed remediation system shall be effective in remediating impacted groundwater as well as mitigating any ongoing releases of impacted groundwater to the tributary to Plaster Creek.

(d) Within 180 days of the Effective Date, Defendants shall submit to EGLE for its review and approval a Response Activity Plan to evaluate sediments in the tributary to Plaster Creek to determine whether any sediments have been impacted as a result of historical releases at the Site and to address sediments that need to be remediated. The extent of the investigation and any Remedial Actions required by this Paragraph 6.9(d) shall be geographically limited from the “point of

daylight” (culvert opening onsite) of Plaster Creek to the confluence of the tributary to Plaster Creek.

(e) Within 365 days of the Effective Date, Defendants shall assess the current restrictive covenants and revise, as necessary, and implement land or resource use restrictions necessary to prohibit the construction of and use of wells or other devices in areas impacted by the contamination to extract groundwater for consumption, irrigation, or any other use, except for wells and devices that are necessary for Response Activities or testing and monitoring groundwater contamination levels in accordance with plans approved by EGLE.

(f) At the conclusion of the activities required by paragraph 6.9(a)–(e), Defendants shall submit to EGLE for its review and approval a no further action report for PFAS and metals (chromium, nickel, and zinc) in groundwater and VOCs in groundwater and soil gas. The no further action report must include:

(i) The basis for concluding that the Remedial Actions included in the no further action report are protective of the public health, safety, and welfare, and the environment with respect to PFAS, VOCs, and metals (chromium, nickel, and zinc) in groundwater relating to the Site.

(ii) Any necessary postclosure plans, postclosure agreements, and financial assurance as specified in MCL 324.20114d.

#### **6.10 32nd Street Site Central Area of Concern Response Activities**

(a) Within 90 days of the Effective Date, Defendants shall submit to EGLE for its review and approval a Response Activity Plan to complete an

investigation to delineate the horizontal and vertical extent of PFAS and VOCs contamination in the groundwater. If the investigation in Subparagraph 6.8 determines that the deeper water bearing zones are contaminated above applicable Part 201 criteria, Defendants shall delineate the horizontal and vertical extent of PFAS and VOCs contamination in the deeper water bearing zones. Defendants shall submit to EGLE for its review and approval a report delineating the horizontal and vertical extent of PFAS and VOCs.

(b) Within 90 days of EGLE's approval of the Response Activity Plan under Subsection 6.10(a), Defendants shall submit to EGLE for its review and approval a Response Activity Plan to complete a comprehensive receptor evaluation and shall submit to EGLE for its review and approval a Response Activity Plan to address, manage, and mitigate (as needed) any receptors that the investigation identifies.

(c) Within 365 days of the Effective Date, Defendants shall submit to EGLE an evaluation of the effectiveness of the current trench system. If the evaluation determines that the current trench system is ineffective, then within 60 days Defendants shall submit to EGLE for its review and approval a feasibility analysis of treatment alternatives and a proposed remedy, with a plan and schedule for its implementation.

(d) Within 90 days of the Effective Date, Defendants shall submit to EGLE for its review and approval an evaluation of the current onsite vapor intrusion mitigation system's (VIMS) effectiveness along with supporting

documentation. Defendants' evaluation shall rely on the Site-Specific Volatilization to Indoor Air Criteria that have been developed and transmitted to the 32nd Street Site's current property owner.

(e) Within 45 days of the Effective Date, Defendants shall submit to EGLE a completed *Site-Specific Volatilization to Indoor Air Criteria and Site-Specific Target Levels Request Form* (Form EQP4467) with the required documentation of site conditions for each building located at 2731, 2745, 2763, 2777, and 2793 32nd Street SE in Kentwood, Michigan. EGLE will use the information on the approved Form EQP4467 submittals to develop Site-Specific Volatilization to Indoor Air Criteria

(f) Within 60 days of the Effective Date, Defendants shall begin an evaluation of sub-slab soil gas under any occupiable structure on the properties located at 2731, 2745, 2763, 2777, and 2793 32nd Street SE in Kentwood, Michigan and complete the evaluation on a timeline submitted to EGLE no later than 60 days after the Effective Date and approved by EGLE. These sub-slab investigations shall, at a minimum, include the following:

(i) Installation of Sub-Slab Vapor Pins. Sub-slab vapor pins shall be installed in a manner consistent with Appendix F.2: *Installation of Sub-Slab Soil Gas Probe/Vapor Monitoring Point to Support Vapor Intrusion Investigations*, of the 2013 VI Guidance, or an EGLE-approved equivalent procedure. The number of sub-slab vapor pins installed shall be either (1) consistent with Table 5-2: Sampling Density in Commercial Buildings (revised

January 10, 2020) of the 2013 VI Guidance or (2) an EGLE-approved number of sub-slab vapor pins.

(ii) Sample Collection from the Sub-Slab Vapor Pins. Each sub-slab vapor pin installed shall be sampled in a manner consistent with Appendix F.3: *Sampling Utilizing USEPA Method TO-15 via Bottle Vac to Support Vapor Intrusion Investigations*, of the VI Guidance, or EGLE-approved equivalent method. Defendants may use a laboratory supplied “summa canister” in place of a Bottle Vac. All samples shall be analyzed by an independent and accredited environmental laboratory using U.S. EPA Method TO-15: *Determination of VOCs in Air Collected in Specialty-Prepared Canisters and Analyzed by Gas Chromatography/Mass Spectrometry (GC/MS)*.

(iii) Review of Analytical Results. All analytical results must be tabulated and compared to the EGLE-developed Site-Specific Volatilization to Indoor Air Criteria. Defendants shall provide EGLE with the laboratory analytical results within one business day of receiving analytical results from the laboratory. Defendants shall provide EGLE with the comparison table within three business days of receiving analytical results from the laboratory.

(g) To address concentrations of hazardous substances present in sub-slab soil gas at all existing buildings or portions of buildings that exceed the EGLE-developed Site-Specific Volatilization to Indoor Air Criteria, Defendants shall:

(i) Submit a proposed Response Activity Plan outlining options for interim response activities for mitigation of unacceptable exposure to hazardous substances via the volatilization to indoor air inhalation pathway to EGLE for review and approval, no later than 60 days after the Effective Date.

(ii) Within three business days of receiving analytical results from the laboratory indicating the potential for unacceptable exposure to hazardous substances via the volatilization to indoor air pathway, begin implementing one or more of the approved interim response activities from the approved Response Activity Plan under Paragraph 6.10(g)(i). The interim Response Activities will require verification sampling and will be subject to EGLE review to determine adequacy. If EGLE determines the interim responsive activities did not adequately mitigate the potential for unacceptable exposure to hazardous substances via the volatilization to indoor air inhalation pathway, Defendants shall submit for EGLE review and approval a revised Response Activity Plan.

(iii) Within 60 days of receiving analytical results from the laboratory, submit to EGLE for its review and approval a Response Activity Plan for Remedial Action to permanently mitigate the potential for unacceptable exposure to hazardous substances via the volatilization to indoor air inhalation pathway.

(h) Defendants shall develop and submit to EGLE for its review and approval a long-term operations, maintenance, and monitoring plan for all vapor intrusion systems at any of the properties listed in Paragraph 6.10(f) related to the 32nd Street Site. These plans shall ensure long-term effectiveness of all vapor



intrusion systems. Defendants shall implement the EGLE-approved long-term operations, maintenance, and monitoring plan.

(i) At the conclusion of the activities required by paragraph 6.10(a)–(h), Defendants shall submit to EGLE for its review and approval a no further action report for PFAS in groundwater and VOCs in groundwater and soil gas. The no further action report must include:

(i) The basis for concluding that the Remedial Actions included in the no further action report are protective of the public health, safety, and welfare, and the environment with respect to PFAS in groundwater and VOCs in groundwater and soil gas relating to the Site.

(ii) Any necessary postclosure plans, postclosure agreements, and financial assurance as specified in MCL 324.20114d.

### **6.11 Stevens Street Site Response Activities**

(a) Defendants shall undertake the activities identified in this Paragraph 6.11 for perchloroethylene (PCE) and its breakdown products.

(b) Defendants shall complete a site-specific evaluation of the volatilization to indoor air pathway (VIAP) and develop Part 201 site-specific volatilization to indoor air criteria (SSVIAC) for PCE and its breakdown products under Section 20120b for EGLE’s review and approval that accounts for the acute and short-term risks. Within 45 days after the Effective Date, Defendants shall submit to EGLE a completed *Site-Specific Volatilization to Indoor Air Criteria and Site-Specific Target Levels Request Forms* (Form EQP4467) with the required

documentation of site conditions for the building on the 236 Stevens Street Site for EGLE's review and approval. EGLE will use the information on the approved Form EQP4467 submittals to develop Site-Specific Volatilization to Indoor Air Criteria.

(c) Within 60 days of EGLE's approval of SSVIAC, Defendants shall submit to EGLE for its review and approval a Response Activity Plan to conduct an evaluation of PCE and its breakdown products in the sub-slab soil gas under the 236 Stevens building. The sub-slab soil gas evaluation shall consist, at a minimum, of the following:

(i) Installation of sub-slab vapor pins. The installation of the vapor pins must be conducted in a manner consistent with Appendix F.2:

*Installation of a Sub-Slab Soil Gas Probe/Vapor Monitoring Point to Support Vapor Intrusion Investigations*, of the 2013 VI Guidance Document, or an EGLE-approved equivalent procedure. The number of vapor pins shall be consistent with Table 5-2: Sampling Density in Commercial Buildings of the 2013 VI Guidance Document, or an EGLE-approved equivalent density.

(ii) Sample Collection from the sub-slab vapor pins. Samples must be collected in a manner consistent with Appendix F3: *Sampling Utilizing USEPA Method TO-15 via Bottle-Vac® to Support Vapor Intrusion Investigations* of the 2013 VI Guidance Document, or EGLE-approved equivalent method. All samples shall be analyzed by an independent and accredited environmental laboratory using U.S. EPA Method TO-15: *Determination of VOCs In Air Collected*

*In Specially-Prepared Canisters And Analyzed by Gas Chromatography/Mass Spectrometry (GC/MS).*

(iii) Review of Analytical Results. All analytical results must be tabulated and compared to the EGLE-developed SSVIAC. The analytical results shall be provided to EGLE within one business day of receipt and the comparison table shall be provided within three business days after the laboratory analytical results are received by Defendants.

(d) To address concentrations of hazardous substances present in sub-slab soil gas at all portions of the Site building that exceed the EGLE-developed SSVIAC, Defendants shall:

(i) Submit a proposed Response Activity Plan outlining options for interim response activities for mitigation of unacceptable exposure to hazardous substances via the volatilization to indoor air inhalation pathway to EGLE for review and approval, no later than 60 days after the Effective Date.

(ii) Within three business days of receiving analytical results from the laboratory indicating the potential for unacceptable exposure to hazardous substances via the volatilization to indoor air pathway, begin implementing one or more of the approved interim response activities from the approved Response Activity Plan under Paragraph 6.11(d)(i). The interim Response Activities will require verification sampling and will be subject to EGLE review to determine adequacy. If EGLE determines the interim response activities did not adequately mitigate the potential for unacceptable exposure to hazardous substances via the

volatilization to indoor air inhalation pathway, Defendants shall submit to EGLE for its review and approval a revised Response Activity Plan.

(iii) Within 60 days of receiving analytical results from the laboratory, Defendants shall submit to EGLE for its review and approval a Response Activity Plan for Remedial Action to permanently mitigate the potential for unacceptable exposure to hazardous substances via the volatilization to indoor air inhalation pathway. Defendants shall employ active and/or passive mitigation options as follows:

(1) Active Mitigation. This option includes the installation of a sub-slab depressurization system(s) that maintains negative pressure beneath the building floor slab where sub-slab soil gas exceeds the EGLE-developed SSVIAC. The minimum negative pressure to be maintained beneath the floor slab is 0.02 inches of water as recommended in U.S. EPA publication: *Engineering Issue–Indoor Air Vapor Intrusion Mitigation Approaches*. The sub-slab depressurization system shall be installed in accordance with Appendix C.5: *Checklist for Reviewing the Design of an Active Mitigation System* of the 2013 VI Guidance Document, or EGLE-approved alternatives. Other active mitigation designs may be acceptable upon EGLE review and approval.

(2) Passive Mitigation. This option includes the installation of a passive vapor mitigation system which prevents vapor intrusion from occurring where sub-slab soil gas exceeds the EGLE-developed SSVIAC. Detailed specifications for any proposed vapor barrier must be provided including

transmission rates and/or diffusion coefficients for the relevant hazardous substances. The passive mitigation system(s) must receive EGLE approval and shall be installed in accordance with Appendix C.6: *Checklist for Reviewing the Design of Passive Mitigation System* of the 2013 VI Guidance Document, or EGLE-approved alternatives. Other passive mitigation designs may be acceptable upon EGLE review and approval.

(e) Within 210 days of the Effective Date, Defendants shall submit for EGLE review and approval a Response Activity Plan to undertake a remedial investigation consistent with Part 201 to determine the nature and extent of PCE and its breakdown products at the Stevens Street Site in the soil gas.

(f) Within 60 days of completion of the remedial investigation, Defendants shall submit a Response Activity Plan to EGLE for its review and approval to undertake Response Activities for Remedial Action in accordance with Part 201 to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or the environment that are identified by the remedial investigation.

(g) Within 60 days of EGLE approval of the Response Activity Plan under 6.11(f), Defendants shall implement appropriate land or resource use restrictions, which include language to address exposure through the volatilization to indoor air pathway.

(h) Within 90 days of completion of work identified in Paragraphs 6.11(b)–(g), Defendants shall submit a completion report for EGLE approval. The completion report shall document the basis for concluding that the response

activities completed to investigate and mitigate any unacceptable exposures to PCE and its breakdown products via the volatilization to indoor air inhalation pathway at the 236 Stevens Site are, and will remain, protective of the public health, safety, and welfare.

#### **6.12 Hall Street Site Response Activities**

(a) Defendants shall undertake the activities identified in this Paragraph 6.12 for TCE and its breakdown products.

(b) Defendants shall complete a site-specific evaluation of the volatilization to indoor air pathway (VIAP) and develop Part 201 SSVIAC for TCE and its breakdown products under Section 20120b for EGLE's review and approval that accounts for the acute and short-term risks. Within 45 days of the Effective Date, Defendants shall submit to EGLE completed *Site-Specific Volatilization to Indoor Air Criteria and Site-Specific Target Levels Request Forms* (Form EQP4467) with the required documentation of site conditions for the building on the Hall Street Site for EGLE's review and approval. EGLE will use the information on the approved Form EQP4467 submittals to develop Site-Specific Volatilization to Indoor Air Criteria for the Hall Street Site.

(c) Within 60 days of EGLE approval of SSVIAC, Defendants shall submit to EGLE for its review and approval a Response Activity Plan to conduct an evaluation of sub-slab soil gas under occupiable structures at the Hall Street Site. The sub-slab soil gas evaluation shall consist, at a minimum, of the following:

(i) Installation of sub-slab vapor pins. The installation of the vapor pins must be conducted in a manner consistent with Appendix F.2:

Installation of a Sub-Slab Soil Gas Probe/Vapor Monitoring Point to Support Vapor Intrusion Investigations, of the 2013 VI Guidance Document, or an EGLE-approved equivalent procedure. The number of vapor pins shall be consistent with Table 5-2: Sampling Density in Commercial Buildings of the 2013 VI Guidance Document, or an EGLE-approved equivalent density.

(ii) Sample Collection from the sub-slab vapor pins. Samples must be collected in a manner consistent with Appendix F3: *Sampling Utilizing USEPA Method TO-15 via Bottle-Vac® to Support Vapor Intrusion Investigations* of the 2013 VI Guidance Document, or EGLE-approved equivalent method. All samples shall be analyzed by an independent and accredited environmental laboratory using U.S. EPA Method TO-15: *Determination of VOCs In Air Collected In Specially-Prepared Canisters And Analyzed by Gas Chromatography/Mass Spectrometry (GC/MS)*.

(iii) Review of Analytical Results. All analytical results must be tabulated and compared to the EGLE-developed SSVIAC. The analytical results shall be provided to EGLE within one business day of receipt and the comparison table shall be provided within three business days after the laboratory analytical results are received by Defendants.

(d) To address concentrations of hazardous substances present in sub-slab soil gas at all existing buildings or portions of buildings that exceed the

EGLE-developed Site-Specific Volatilization to Indoor Air Criteria, Defendants shall:

(i) Submit a proposed Response Activity Plan outlining options for interim response activities for mitigation of unacceptable exposure to hazardous substances via the volatilization to indoor air inhalation pathway to EGLE for review and approval, no later than 60 days after the Effective Date.

(ii) Within three business days of receiving analytical results from the laboratory indicating the potential for unacceptable exposure to hazardous substances via the volatilization to indoor air pathway, begin implementing one or more of the approved interim response activities from the approved Response Activity Plan under Paragraph 6.12(d)(i). The interim Response Activities will require verification sampling and will be subject to EGLE review to determine adequacy. If EGLE determines the interim responsive activities did not adequately mitigate the potential for unacceptable exposure to hazardous substances via the volatilization to indoor air inhalation pathway, Defendants shall submit to EGLE for its review and approval a revised Response Activity Plan.

(iii) Within 60 days of receiving analytical results from the laboratory, submit to EGLE for its review and approval a Response Activity Plan for Remedial Action to permanently mitigate the potential for unacceptable exposure to hazardous substances via the volatilization to indoor air inhalation pathway. Defendants shall employ active and/or passive mitigation options as follows:



(1) Active Mitigation. This option includes the installation of a sub-slab depressurization system(s) that maintains negative pressure beneath the building floor slab where sub-slab soil gas exceeds the EGLE-developed SSVIAC. The minimum negative pressure to be maintained beneath the floor slab is 0.02 inches of water as recommended in U.S. EPA publication: *Engineering Issue–Indoor Air Vapor Intrusion Mitigation Approaches*. The sub-slab depressurization system shall be installed in accordance with Appendix C.5: *Checklist for Reviewing the Design of an Active Mitigation System* of the 2013 VI Guidance Document, or EGLE-approved alternatives. Other active mitigation designs may be acceptable upon EGLE review and approval.

(2) Passive Mitigation. This option includes the installation of a passive vapor mitigation system which prevents vapor intrusion from occurring where sub-slab soil gas exceeds the EGLE-developed SSVIAC. Detailed specifications for any proposed vapor barrier must be provided including transmission rates and/or diffusion coefficients for the relevant hazardous substances. The passive mitigation system(s) must receive EGLE approval and shall be installed in accordance with Appendix C.6: *Checklist for Reviewing the Design of Passive Mitigation System* of the 2013 VI Guidance Document, or EGLE-approved alternatives. Other passive mitigation designs may be acceptable upon EGLE review and approval.

(e) Within 240 days of the Effective Date, Defendants shall submit for EGLE review and approval a Response Activity Plan to undertake a remedial

investigation consistent with Part 201 to determine the nature and extent of TCE, and its breakdown products at the Hall Street Site in the soil gas.

(f) Within 90 days of completion of the remedial investigation, Defendants shall provide a Response Activity Plan for Remedial Action to EGLE for its review and approval to undertake Response Activities in accordance with Part 201 to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or the environment that are identified by the remedial investigation.

(g) Within 60 days of EGLE's approval of the Response Activity Plan under Subparagraph 6.12(f), Defendants shall implement appropriate land or resource use restrictions, which include language to address exposure through the volatilization to indoor air pathway.

(h) Within 90 days of completion of work identified in Paragraphs 6.12(b)–(g), Defendants shall submit a completion report to EGLE for its approval for the work performed. The completion report shall document the basis for concluding that the response activities completed to investigate and mitigate any unacceptable exposures to TCE and its breakdown products via the volatilization to indoor air inhalation pathway at the Hall Street Site are, and will remain, protective of the public health, safety, and welfare.

**6.13 Schedules for Implementation.** All Response Activity Plans shall include an implementation schedule for EGLE review and approval. All plans must be implemented in accordance with the approved schedule.

#### **6.14 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 requirements of this Decree, EGLE may require that such modification be incorporated into a Response Activity Plan previously approved by EGLE under this Decree. If extensive modifications are necessary, EGLE may require Defendants to develop and submit a new Response Activity Plan.

(b) Defendants 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 its review and approval. Any such request for modification by Defendants must be forwarded to EGLE at least 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 Section and shall be submitted to EGLE for its 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, Defendants 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.

**6.15 Public Notice and Public Meeting Requirements pursuant to MCL 324.20120d.**

If EGLE determines there is significant public interest in a proposed Response Activity Plan for Remedial Action as required by this Decree and if Defendants proposes a Response Activity Plan for a Remedial Action based on categorical criteria provided for in MCL 324.20120a(1)(c), MCL 324.20120a(1)(d), or site-specific criteria provided for in MCL 324.20120a(2), EGLE will make those Response Activity Plans available for public comment. When EGLE determines that a Response Activity Plan for Remedial Action is acceptable for public review, a public notice regarding the availability of the Response Activity Plans will be published, and those Response Activity Plans shall be made available for review and comment for a period of not less than 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 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 proposed Response Activity Plan for Remedial Action back to Defendants 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 Response Activity Plan for Remedial Action in accordance with the provisions of MCL 324.20120d(4) and MCL 324.20120d(5). Upon EGLE's request, Defendants shall provide information to

EGLÉ for the final responsiveness summary document or Defendants shall prepare portions of the draft responsiveness summary document.

#### **6.16 Progress Reports**

(a) Defendants shall provide to EGLÉ's Project Manager written progress reports regarding Response Activities and other matters at the Sites 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 received by Defendants, their 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 Defendants propose 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.

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

(b) The first progress report shall be submitted to EGLE within 120 days following the Effective Date of this Decree. Thereafter, progress reports shall be submitted quarterly, and the annual report under Section VIII of this Decree will serve as the fourth quarterly report for each year. Pursuant to Paragraph 25.1 of this Decree, EGLE may approve modification of the schedule for the submission of progress reports.

#### **6.17 EGLE's Performance of Response Activities**

If Defendants cease to perform the Response Activities required by this Decree; are not performing Response Activities in accordance with this Decree; or are 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 Defendants with 30 days prior written notice, take over the performance of those Response Activities. EGLE, however, is not required to provide 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 Defendants are obligated to perform under this Decree and Defendants fail to undertake those Response Activities after the notice described in this Paragraph, Defendants 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 Oversight Costs" in Paragraph 4.9 and 16.3(a). Defendants shall provide reimbursement of these costs and any accrued interest to the State in accordance with Paragraphs 16.3(b), 16.4, and 16.6 of Section XVI (Payment of Costs) of this Decree.

## **VII. FINANCIAL ASSURANCE**

7.1 Defendants shall be responsible for providing and maintaining financial assurance as defined by MCL 324.20101(1)(u), in a mechanism acceptable to EGLE, consistent with MCL 324.20114d(4)(b), to assure the performance of all ongoing and long-term operation and maintenance obligations required by Defendants' selected Remedial Actions for each Site. The Defendants shall propose their initial FAM to EGLE for EGLE's review and approval at the time they submit their first Response Activity Plan that includes Remedial Action. For each subsequent Response Activity Plan that involves Remedial Action, Defendants shall propose a new FAM or a modification to the initial FAM to EGLE for EGLE's review and approval at the time they submit their Response Activity Plan that includes Remedial Action. Each FAM or approved modification to an existing FAM shall be established within 30 days of EGLE's approval of Defendants' proposed FAM or modification to an existing FAM.

7.2 The FAM or FAMs shall remain in an amount sufficient to cover ongoing and long-term operation and maintenance obligations for each Site for a 30-year period. Unless the use of the Financial Test or Financial Test/Corporate Guarantee is approved as an acceptable FAM, the FAM or FAMs shall remain in a form that allows EGLE to immediately contract for the Response Activities for which financial assurance is required in the event Defendants fail to implement the required tasks.

7.3 60 days prior to the five year anniversary of the Effective Date of this Decree and each subsequent five year anniversary, Defendants shall provide to EGLE a report containing the actual ongoing and long-term operation and maintenance obligations for the previous five year period and an estimate of the amount of funds necessary to assure ongoing and long-term operation and maintenance obligations for the following 30-year period given the financial trends in existence at the time of preparation of the report (Ongoing and Long-Term Operation and Maintenance Obligations Report). The Ongoing and Long-Term Operation and Maintenance Obligations Report shall also include all assumptions and calculations used in preparing the necessary cost estimate and shall be signed by an authorized representative of Defendants who shall confirm the validity of the data. Defendants may only use a present worth analysis if an interest accruing FAM is selected.

7.4 Within 60 days after Defendants' submittal of the Ongoing and Long-Term Operation and Maintenance Obligations Report to EGLE, Defendants shall



capitalize or revise the FAM or FAMs in a manner acceptable to EGLE to address ongoing and long-term operation and maintenance obligations consistent with the conclusions of the Ongoing and Long-Term Operation and Maintenance Obligations Report unless otherwise notified by EGLE. If EGLE disagrees with the conclusions of the Ongoing and Long-Term Operation and Maintenance Obligations Report, Defendants shall capitalize the FAM or FAMs to a level acceptable to EGLE within 30 days of EGLE notification. If, at any time, EGLE determines that the FAM does not secure sufficient funds to address ongoing and long-term operation and maintenance obligations, Defendants shall capitalize the FAM or FAMs, or provide an alternate FAM to secure any additional costs within 30 days of request by EGLE.

7.5 If, pursuant to the Ongoing and Long-Term Operation and Maintenance Obligations Report, Defendants can demonstrate that the FAM or FAMs provide funds in excess of those needed for ongoing and long-term operation and maintenance obligations for the Sites, Defendants 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 ongoing and long-term operation and maintenance obligations at the Sites. Upon EGLE's approval of the request, Defendants may modify the FAM or FAMs as approved by EGLE. Modifications to the FAM or FAMs pursuant to this Paragraph shall be approved by the EGLE RRD Assistant Division Director or his or her authorized representative.

7.6 If the use of the Financial Test is approved as an acceptable FAM, Defendants shall, within 90 days after the end of Defendants' next fiscal year and the end of each succeeding fiscal year, submit to EGLE the necessary forms and supporting documents to demonstrate to the satisfaction of EGLE that Defendants can continue to meet the Financial Test requirements. If Defendants can no longer meet the financial test requirements, Defendants shall submit a proposal for an alternate FAM to satisfy its financial obligations with respect to the No Further Action Report, Completion Report, and this Decree.

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

7.8 If the use of the Financial Test/Corporate Guarantee is approved as an acceptable FAM for the No Further Action Report or Completion Report, Defendants shall comply with the terms of the Corporate Guarantee. The Corporate Guarantee shall remain in place until ongoing and long-term operation and maintenance obligations are no longer required at the Sites or Defendants establish an alternate FAM acceptable to EGLE.

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

7.10 If Defendants dissolve or otherwise cease to conduct business and fail to make arrangements acceptable to EGLE for the continued implementation of all activities required by the Remedial Action, all rights under this Decree regarding the FAMs shall immediately and automatically vest in EGLE in accordance with the FAMs' terms.

## **VIII. ANNUAL PROGRESS REPORTS**

Within 60 days after of the first anniversary of this Decree and within 60 days after each anniversary thereafter, Defendants 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 Defendants at the Sites for the prior year. The annual report will serve as the fourth quarterly report under Paragraph 6.16(b) of this Decree and shall include the information required under Paragraph 6.16(a) of this Decree and 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 Keeler Multi-Sites and Court Case No. 2022-09032-CE. 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 Defendants 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, Defendants 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 Subject to Section XVIII (Dispute Resolution), upon receipt of a notice of disapproval from EGLE pursuant to Paragraph 9.2(c) of this Decree, Defendants shall within 30 days correct the deficiencies and provide the revised Submission to EGLE for review and approval, unless the notice of disapproval specifies a longer time period for resubmission. Unless otherwise stated in EGLE’s notice of disapproval, Defendants 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 30 day period or other time period specified for Defendants 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 so advise Defendants 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 Defendants deliver 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 Defendants to deliver an acceptable Submission that complies with Part 201 and this Decree, EGLE will notify Defendants of such, and will deem Defendants 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 Defendants shall not be construed as

relieving Defendants of their obligation to obtain any formal approval required under this Decree.

## **X. ACCESS**

10.1 Upon the Effective Date of this Decree, Defendants shall allow EGLE and its authorized employees, agents, representatives, contractors, and consultants to enter the Sites and associated properties at all reasonable times to the extent access to the Sites and any associated properties are owned, controlled by, or available to Defendants. Upon presentation of proper credentials and upon making a reasonable effort to contact the person in charge of the respective Site, EGLE staff and its authorized employees, agents, representatives, contractors, and consultants shall be allowed to enter the Site and associated properties 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 Site, including, but not limited to, the following:

- (a) Monitoring Response Activities or any other activities taking place pursuant to this Decree at the Site;
- (b) Verifying any data or information submitted to EGLE;
- (c) Assessing the need for, or planning, or conducting investigations relating to the Site;
- (d) Obtaining samples;
- (e) Assessing the need for, or planning, or conducting Response Activities at or near the Site;

(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 Site 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 the Sites, or any other property where the Response Activities are to be performed by Defendants under this Decree, is owned or controlled by persons other than Defendants, Defendants agree to use their best efforts to secure from such persons written access agreements or judicial Decrees providing access for the Parties and their authorized employees, agents, representatives, contractors, and consultants. Defendants shall provide EGLE with a copy of each written access agreement or judicial Decree secured pursuant to this Section. For purposes of this Paragraph, “best efforts” includes, but is not limited to, offering reasonable consideration to the owner or taking judicial action, to secure such access. EGLE may cooperate with Defendants in their exercise of best efforts to secure access by, where appropriate and on reasonable request by Defendants, communicating with the property owner to discuss EGLE’s interests, describe the



need for access, and identify the property owner's responsibility to cooperate under applicable law. If judicial action is required to obtain access, Defendants shall provide documentation to EGLE that such judicial action has been filed in a court of appropriate jurisdiction no later than 120 days after Defendants' receipt of EGLE's approval of the Response Activity Plan for which such access is needed. If Defendants have not been able to obtain access within 60 days after filing judicial action, Defendants shall promptly notify EGLE of the status of its efforts to obtain access and shall describe how any delay in obtaining access may affect the performance of Response Activities for which the access is needed. Any delay in obtaining access shall not be an excuse for delaying the performance of Response Activities, unless the State determines that the delay was caused by a *Force Majeure* event pursuant to Section XIII (*Force Majeure*).

10.3 Any lease, purchase, contract, or other agreement entered into by Defendants that transfers to another person a right of control over the Sites or a portion of the Sites 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.

10.4 Any person granted access to the Site 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 Defendants, or their consultants or subcontractors, shall provide EGLE a 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 10 day notice is not possible, Defendants, or their consultants or subcontractors, shall provide notice of the planned sampling activity as soon as possible to EGLE Project Manager and explain why earlier notification was not possible. If EGLE Project Manager concurs with the explanation provided, Defendants may forego the 10-day notification period for that particular sampling event.

11.3 Defendants shall provide EGLE with the results of all environmental sampling, and other analytical data generated relating to the Sites in the performance or monitoring of any requirement under this Decree. In addition to any specific reporting requirements contained in this Decree, these results shall be included in the progress reports set forth in Paragraph 6.16 of this Decree.

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

## **XII. EMERGENCY RESPONSE**

12.1 If during the course of Defendants performing Response Activities pursuant to this Decree, an act or the occurrence of an event by Defendants, Defendant Releasees, or their agents or contractors, cause a release or threat of release of a hazardous substance at or from any of the Sites, or causes exacerbation of existing contamination at or emanating from any of the Sites, 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, Defendants shall immediately undertake all appropriate actions to prevent, abate, or minimize such release, threat of release, or exacerbation; and shall immediately notify the EGLE Project Manager. In the event of EGLE's Project Manager's unavailability, Defendants shall notify the Pollution Emergency Alerting System (PEAS) at 1-800-292-4706. In such an event, any actions taken by Defendants 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 10 days of notifying EGLE of such an act or event, Defendants 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 Defendants notify EGLE under this Section, if an act or event by Defendants, Defendant Releasees, or their agents or contractors, causes a release, threat of release, or exacerbation, EGLE may: (a) require Defendants to stop Response Activities at the Site for such period

of time as may be needed to prevent or abate any such release, threat of release, or exacerbation; (b) require Defendants 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 Defendants shall perform the requirements of this Decree within the time limits established herein, unless the time limits are modified by agreement or 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 Defendants of any person controlled by Defendants, or of Defendants’ contractors that delays or prevents the performance of any obligation under this Decree despite Defendants’ “best efforts to fulfill the obligation.” “Fault” shall only include any alleged acts or omissions of Defendants on and after the Effective Date. The requirement that Defendants exercise “best efforts to fulfill the obligation” includes Defendants 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 Defendants minimize 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 Defendants, 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 one or both of the Defendants 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 Defendants.

13.3 Defendants shall notify EGLE by telephone within 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 10 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 Defendants to prevent or minimize the delay; and the timetable by which those measures shall be implemented. Defendants shall use its best efforts to avoid or minimize any such delay.

13.4 Failure of Defendants 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 Defendants, this may be so stipulated and the parties to this Decree may agree upon an appropriate modification of this Decree. If the parties to this Decree 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 Defendants, and that all the requirements of this Section have been met by Defendants, is on Defendants.

13.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Defendants qualify 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 Defendants shall preserve and retain, for a period of 10 years after completion of all Response Activities required under this Decree, including any operation and maintenance and long-term monitoring at the Sites, 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 Sites; 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 Defendants. At the conclusion of this retention period, Defendants shall notify EGLE at least 60 days prior to the destruction of any documents covered by this Paragraph, and, upon request by EGLE, Defendant shall deliver any such records or documents to EGLE. Defendants' 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. Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by Michigan law. If Defendants assert such a privilege, they shall provide EGLE with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of this Decree shall be withheld on the grounds that they are privileged.

14.2 Upon request, Defendants shall provide to EGLE copies of all non-privileged 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 Defendants shall also make available to EGLE, upon reasonable notice, Defendants' employees, contractors, agents, or representatives with knowledge of relevant facts concerning the performance of Response Activities.

14.3 If Defendants submit documents or information to EGLE that Defendants believe are entitled to protection as provided for in MCL 324.20117(10) of the NREPA, Defendants 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 Defendants. Information described in MCL 324.20117(11)(a)-(h), shall not be claimed as confidential or privileged by Defendants. 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.*

## **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 is needed, such communications shall be directed to the designated Project Managers at the address listed below. Notices and submissions may be provided by electronic means. 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 at the Sites and other requirements specified in this Decree for Defendants.

(a) As to EGLE:

(i) For the Godfrey Site, the Stevens Street Site, and the

Hall Street Site:

Peter VanHeest  
Grand Rapids District  
Remediation and Redevelopment Division  
Michigan Department of Environment Great Lakes, and Energy  
P.O. Box 30426  
Lansing, Michigan 48909-7926  
Phone: 616-439-8019  
E-mail Address: [VanHeestP@michigan.gov](mailto:VanHeestP@michigan.gov)

For work plan and Response Activity Plan submissions, NFAs, completion reports, and progress reports: Via RIDE at <https://www.michigan.gov/egle/maps-data/ride>.

(ii) For the 32nd Street Site:

Jason Poll  
Grand Rapids District  
Remediation and Redevelopment Division  
Michigan Department of Environment Great Lakes, and Energy

P.O. Box 30426  
Lansing, Michigan 48909-7926  
Phone: 616-446-1263  
E-mail Address: [PollJ@michigan.gov](mailto:PollJ@michigan.gov)

For work plan and Response Activity Plan submissions, NFAs  
and progress reports: Via RIDE at <https://www.michigan.gov/egle/maps-data/ride>.

(b) As to Defendant:

Rodney V. Brunner CSS., CHCM  
Safety Environmental Director  
Kito Crosby  
2801 Dawson Rd.  
Tulsa, OK 74110  
Phone: 918-832-5348  
Email: [rodney.brunner@kitocrosby.com](mailto:rodney.brunner@kitocrosby.com)

Scott Bell, PE  
Vice President  
LimnoTech  
501 Avis Drive  
Ann Arbor, MI 48108  
Phone: 734-332-1200, ext. 168  
734-821-3168  
Email: [sbell@limno.com](mailto:sbell@limno.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 10 days after the Effective Date of this Decree, Defendants shall pay one-million, two-hundred and fifty thousand dollars (\$1,250,000.00) to

cover the State's litigation costs and attorneys' fees relating to this action. Payment shall be made pursuant to information provided by the State's counsel.

16.2 Within 10 days after the Effective Date of this Decree, Defendants shall pay the State four hundred and eighty-five thousand dollars (\$485,000) in full satisfaction of the State's Past Response Activity Costs. Payment shall be made as set forth in Paragraph 16.7.

16.3 Defendants shall reimburse the State as follows for Future Oversight Costs and Future Response Activity Costs incurred by the State.

(a) Defendant shall pay in total two hundred and fifty thousand dollars (\$250,000.00) in full satisfaction for all the State's Future Oversight Costs. Defendants shall pay this amount in annual payments of \$50,000 to EGLE in the manner set forth in Paragraph 16.6. The first payment shall be made by February 1, 2025, and all subsequent payments shall be made on the anniversary of that date.

(b) Defendants shall also be responsible for all Future Response Activity Costs EGLE incurs under Paragraph 6.17 (EGLE's Performance of Response Activities), Section XVIII (Dispute Resolution), and any Future Response Activity Costs EGLE incurs to enforce this Consent Decree.

16.4 Defendants shall reimburse the State for Future Response Activity Costs incurred by the State pursuant to Paragraph 16.3(b) as follows:

(a) Future Response Activity Costs incurred to enforce this Decree or incurred because EGLE prevailed in a Dispute Resolution process in Section

XVIII that was invoked by a Party to this Decree, will periodically be invoiced to Defendants 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. Except as provided by Section XVIII (Dispute Resolution) of this Decree, Defendants shall reimburse the State for such costs within 30 days of Defendants' receipt of an invoice from the State.

16.5 Defendants shall have the right to request a full and complete accounting of all State invoices made under Paragraphs 16.3(b), including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the State. The State's provision of these documents to Defendants may result in the State incurring additional Future Response Activity Costs, which will be included in the invoice for payment of Future Response Activity Costs pursuant to 16.4(b).

16.6 All payments made pursuant to Paragraph 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, 1<sup>st</sup> Floor West  
425 West Ottawa Street  
Lansing, Michigan 48933

The Keeler Brass Multi-Site and Court Case No. 2022-09032-CE, and the RRD Account Number **RRD50180** 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 Michigan Department of Attorney General 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: 517-335-7664  
Fax: 517-335-7636

Costs recovered pursuant to Paragraphs 16.2 and 16.3(b) 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 paid pursuant to Paragraph 16.3(a) shall be deposited into a restricted subaccount in the Environmental Response Fund in accordance with the provisions of MCL 324.20108(2)–(4). The funds deposited into the subaccount shall be used by EGLE to pay costs of future oversight 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 at the Sites. If

EGLE determines funds from Paragraph 16.3(a) are not necessary after 10 years, then the funds can be released to the Environmental Response Fund general account.

16.7 If Defendants fail to make full payment to EGLE for Past Response Activity Costs, Future Oversight Costs, or Future Response Activity Costs as specified in Paragraphs 16.4 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 Defendants make full payment of those costs and the accrued interest to EGLE. In any challenge by Defendants to an EGLE demand for reimbursement of costs, Defendants shall have the burden of establishing that EGLE did not lawfully incur those costs in accordance with this Decree or with MCL 324.20126a(1)(a).

## **XVII. STIPULATED PENALTIES**

17.1 Defendants 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 Defendants 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>
\$500	1st through 14th day
\$1000	15th through 30th day
\$2,500	31st 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 Defendants fail or refuse to comply with any other term or condition of this Decree, Defendants 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, Defendants shall pay stipulated penalties owed to the State no later than 30 days after Defendants' 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 30-day period on the day after payment was due until the date upon which the Defendants make full payment of those stipulated penalties and the accrued interest to the State. Failure to pay the stipulated penalties within 30 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 Defendants' obligation to perform the Response Activities required by this Decree.

17.7 If Defendants fail 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 Defendants violate this Decree. For any failure or refusal of any 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.

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, which is not disputable. However, the procedures set forth in this Section shall not apply to actions by the State to enforce any of Defendants' obligations that have not been disputed in accordance with this Section. Engagement of dispute resolution pursuant to this Section shall not be cause for Defendants 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 Defendants provide 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 between the district staff representing EGLE and Defendants. A dispute shall be considered to have arisen on the date that a Party to this Decree 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 Defendants object to any EGLE notice of disapproval, modification, or decision concerning the requirements of this

Decree that is subject to dispute under this Section, Defendants shall submit the Notice of Dispute within 10 days of receipt of EGLE's notice of disapproval, modification, or decision. The period of informal negotiations shall not exceed 20 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 20 days or within the agreed-upon time period, the RRD District Supervisor will thereafter provide EGLE's Statement of Position, in writing, to Defendants. In the absence of initiation of formal dispute resolution by Defendants 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 Defendants and EGLE cannot informally resolve a dispute under Paragraph 18.3 of this Decree, Defendants may initiate formal dispute resolution by submitting a written Request for Review to the RRD Director, with a copy to EGLE's Project Manager, requesting a review of the disputed issues. This Request for Review must be submitted within 10 days of Defendants' 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 20 days of the RRD Director's receipt of Defendants' Request for Review, the RRD Director will provide EGLE's Statement of Decision, in writing, to Defendants, which will include a statement of his or her understanding of the issues in dispute;

the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting his or her position; and supporting documentation he or 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. EGLE's Statement of Decision shall be binding on the Parties, unless judicial review occurs pursuant to Paragraph 18.5.

18.5 EGLE's Statement of Decision pursuant to Paragraph 18.4, shall control unless, within 20 days after Defendants' receipt of EGLE's Statement of Decision, Defendants file 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 30 days of Defendants' 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, the Defendants 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, the Defendants 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 Defendants' 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 Defendants do not prevail on the disputed matters, the State may demand payment of stipulated penalties and Defendants shall pay stipulated penalties as set forth in Paragraph 17.5 of Section XVII (Stipulated Penalties) of this Decree. Defendants shall not be assessed stipulated penalties for disputes that are resolved in their favor. The Michigan Department of Attorney General may take civil enforcement action against Defendants to seek the assessment of civil penalties or damages, pursuant to MCL 324.20137(1), or other statutory and equitable authorities.

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, Defendants 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 Michigan Department of Attorney General shall constitute a final agency action giving rise to any rights of judicial review prior to the Michigan Department of

Attorney General's initiation of judicial action to compel Defendants to comply with this Decree or to enforce a term, condition, or other action required by this Decree. This does not limit or affect Defendants' right to file with this Court a motion for resolution of a dispute pursuant to Paragraph 18.5. Nothing in this Decree shall expand Defendants' 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 Defendants, Defendant Releasees, or any other person.

19.2 Defendants 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 either or both of Defendants, either of their officers, employees, agents, or any other person acting on either of their behalf or under either of their control, in performing the activities required by this Decree.

19.3 Defendants 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 either Defendant and any person for the performance of Response Activities at any of the Sites, including any claims on account of construction delays.

19.4 The State shall provide Defendants notice of any 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 of Michigan 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 Defendants for the performance of activities required by this Decree. Neither Defendants nor their contractors shall be considered an agent of the State.

19.6 Defendants waive 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 Defendants and any other person for the performance of Response Activities relating to any of the Sites, 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, Defendants 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 as additional insured parties. If Defendants demonstrate 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, Defendants need 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 Defendants and prior to commencement of Response Activities pursuant to this Decree, Defendants shall provide EGLE Project Manager and the Michigan Department of Attorney General with certificates evidencing said insurance and EGLE, the Michigan Department of Attorney General, and the State's status as additional insured parties. Such certificates shall specify the Keeler Multi-Sites and Court Case No. 2022-09032-CE, 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 Defendants under the terms of this Decree, and except as specifically provided for in Section XXII (Reservation of Rights by the State) of this Decree, the Parties have fully and finally settled and resolved the claims in the Complaint, and the State hereby covenants not to sue or to take further administrative action against Defendants or Defendant Releasees for Response Activities to address the release or threatened release of hazardous substances at, to, or from the Sites, as of the Effective Date, as follows:

(a) Response Activities that Defendants perform pursuant to EGLE-approved Response Activity Plans under this Decree.

(b) Liability under Part 201 for any alleged past failures to respond to the State's requests for information in connection with the allegations raised in the Complaint.

(c) Recovery of litigation costs, attorney fees, and Past Response Activity Costs associated with the Sites that Defendants have paid as set forth in Section XVI (Payment of Costs) of this Decree.

(d) Recovery of Future Oversight Costs and Future Response Activity Costs associated with the Sites that Defendants have paid as set forth in Section XVI (Payment of Costs) and any applicable interest that accrues under this Decree.

(e) Damages for injury to, destruction of, or loss of natural resources associated with the release or threatened release of hazardous substances at, to, and from the Sites for those hazardous substances in environmental media addressed in an NFA or Completion Report under Section VI, and the costs for any natural resource damage assessment associated therewith.

(f) Liability for any of the foregoing matters addressed in subparagraphs (a) through (e) under a theory of actual or constructive fraud pursuant to MCL 566.34 or 566.35, or under a theory of piercing the corporate veil.

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

(a) With respect to Defendants' liability for Response Activities performed in compliance with EGLE-approved Response Activity Plans under this Decree and for natural resource damages, the covenant not to sue shall take effect



upon EGLE approval of the No Further Action Report or Completion Report submitted pursuant to Section VI (Performance of Response Activities) of this Decree.

(b) With respect to Defendants' liability for Attorneys' Fees, Past Response Activity Costs, Future Oversight Costs, and Future Response Activity Costs incurred and paid by the State, 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.

(c) With respect to Defendants' liability under theories of fraud or piercing the corporate veil, and for information request allegations in the Complaint on the Effective Date of the Decree.

20.3 The covenants not to sue extend only to Defendants and Defendant Releasees identified in Attachment F and do not extend to any other person.

## **XXI. DISMISSAL WITH PREJUDICE FOR NON-WORK SITES**

The State agrees to entry of an Order of dismissal with prejudice and without costs of Plaintiffs' Complaint with respect to the Non-Work Sites, which are not addressed in this Decree. In addition to the reservation of rights contained in Section XXII (Reservation of Rights by the State) with respect to the Sites, the State explicitly reserves the right to reinitiate the litigation described in this Decree related to the Non-Work Sites if the State discovers any new information after the Effective Date. In any litigation that the State initiates as a result of new information related to the Non-Work Sites, Defendants shall not raise any defense

related to res judicata, waiver, laches, claim splitting, or other legal or equitable defenses that arise from the State's dismissal of its claims pursuant to this Paragraph, but Defendants reserve all other defenses, claims and rights related to any such claims.

## **XXII. RESERVATION OF RIGHTS BY THE STATE**

22.1 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 Defendants and Defendant Releasees with respect to the following:

- (a) The performance of Response Activities that are required by a Response Activity Plan or this Decree.
- (b) Response Activity Costs that Defendants have not paid as required by or demanded 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 Sites and that are not attributable to the Sites.
- (d) The past, present, or future offsite treatment, handling, disposal, release, or threat of release of hazardous substances taken from the Sites.
- (e) Criminal acts.

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

(g) The release or threatened release of hazardous substances by Defendants, Defendant Releasees, and their contractors or agents 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 Defendants and Defendant Releasees have not received a covenant not to sue.

(h) Any issue addressed in MCL 324.20132(6) as it relates to unknown conditions at the Sites.

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

22.3 The State, including EGLE and the Michigan Department of the Attorney General, expressly reserve all of its rights and defenses pursuant to any available legal authority to enforce this Decree.

22.4 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.

22.5 In addition to, and not as a limitation of any provision of this Decree, the State, including EGLE and the Michigan Department of Attorney General, retain all of their information-gathering, inspection, access, and enforcement

authorities and rights under Part 201, and any other applicable statute or regulation.

22.6 Failure by the State 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 Defendants' noncompliance with any such term, condition, or requirement of this Decree.

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

22.7 This Decree does not constitute a warranty or representation of any kind by EGLE that the Response Activities performed by Defendants 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.

22.8 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 of Michigan, pursuant to MCL 324.20119 and MCL 324.20137, as provided for under MCL 324.20132(8), to direct or order 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 on, at, or from the Sites.

22.9 Defendants agree that all applicable statutes of limitation are tolled from the date of filing of the Complaint until the Covenants Not to Sue take effect under Paragraph 20.2.

### **XXIII. COVENANT NOT TO SUE BY DEFENDANT**

23.1 Defendants hereby covenant 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, including, but not limited to, 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. Nothing in this Section shall be construed to limit Defendants' dispute resolution rights set forth in Section XVIII (Dispute Resolution).

23.2 After the Effective Date of this Decree, if the State initiates any administrative or judicial proceeding for injunctive relief, recovery of Response Activity Costs, or other appropriate relief relating to the Sites or the Non-Work Sites Defendants agree 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 the State in such a proceeding were or should have been brought in this case, 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, or the dismissal with prejudice of the Complaint with respect to the Non-Work Sites as set forth in Section XXI (Dismissal with Prejudice for Non-Work Sites).

#### **XXIV. 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 9613(f)(2); and to the extent provided in Section XX (Covenants Not to Sue by the State) of this Decree, Defendants 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 a judicially approved settlement for purposes of Section 113(f)(3)(B) of the CERCLA, 42 USC 9613(f)(3)(B), pursuant to which Defendants have, as of the Effective Date, resolved their 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 Defendants 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.

## **XXV. MODIFICATIONS**

25.1 The Parties may only modify this Decree according to the terms of this Section. The modification by the Defendants of any Submission or schedule required by this Decree may be made only upon written approval from the State.

25.2 Modification of any other provision of this Decree shall be made only by written agreement between Defendants' Project Manager, the RRD Assistant Division Director or his or her authorized representative, and the designated representative of the Michigan Department of the Attorney General and the Defendants.

## **XXVI. 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.

## **XXVII. INTEGRATION**

This Decree and its attachments 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.

## **XXVIII. FINAL JUDGMENT**

28.1 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.

28.2 Upon entry of this Decree by the Court, this Decree shall constitute a final judgment between and among the Parties. The Court enters this Decree 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 \_\_\_\_\_, 2024.**



Court Case No. 2022-09032-CE

IT IS SO AGREED TO AND DECREED BY:

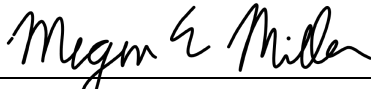
MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY



\_\_\_\_\_  
**Mike Neller**, Division Director  
Remediation and Redevelopment Division  
Michigan Department of Environment, Great Lakes,  
and Energy

\_\_\_\_\_  
12-20-2024  
Date

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL



\_\_\_\_\_  
**Megan E. Miller (P78901)**  
Assistant Attorney General  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General

\_\_\_\_\_  
December 23, 2024  
Date

IT IS SO AGREED BY:

Defendant FKI Hardware, Inc.



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**Scott M. Watson (P70185)**  
Barnes & Thornburg LLP  
Attorney for Defendant FKI Hardware, Inc.

Dec. 23, 2024  
Date

Defendant FKI Industries, Inc.



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**Scott M. Watson (P70185)**  
Barnes & Thornburg LLP  
Attorney for Defendant FKI Industries, Inc.

Dec. 23, 2024  
Date