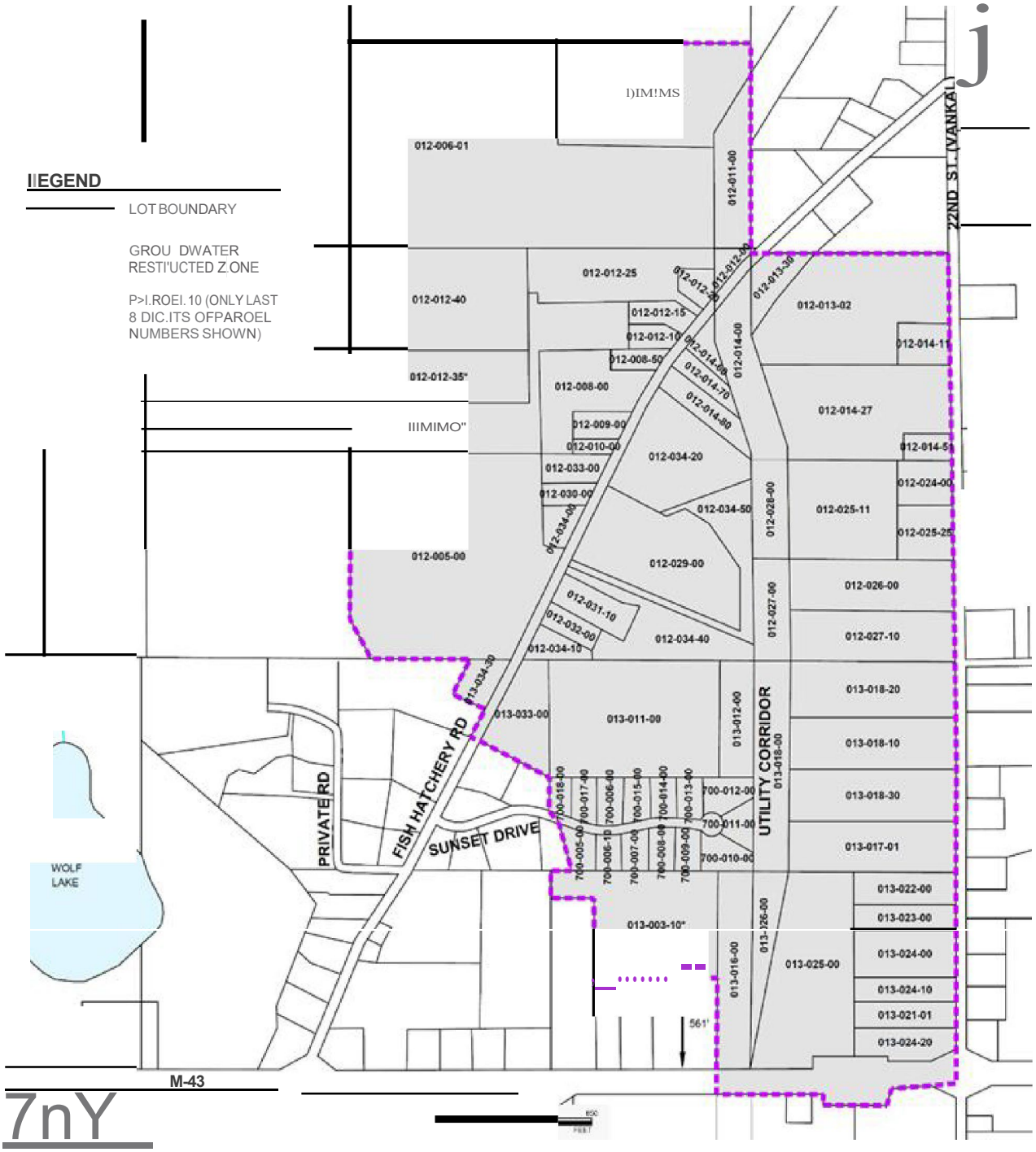
Notice of Public Hearing Van Buren Cass District Health Department – Adoption of Regulation Regarding Groundwater Use Restricted Zone

The Van Buren Cass District Health Department has set a public hearing regarding the adoption of a regulation to prohibit the use of groundwater from wells located in the vicinity of contaminated ground water. The regulation establishes a groundwater use restricted zone in Almena Township in Van Buren County in an area west of 22nd Street and north of M-43 including portions of Fish Hatchery Road and Sunset Drive (see map). The restricted zone will prohibit the installation of wells in the affected area in Almena Township unless the well is approved by U.S. EPA or EGLE and the Health Department.

The public hearing will take place on October 9, 2024, at 3pm at the Van Buren ISD Conference Center, 490 South Paw Paw Street, Lawrence, MI. Members of the public will have an opportunity to present data, view, and arguments regarding the proposed regulation. The regulation will become effective upon adoption by the Health Department Board of Health, and approval by the Van Buren County Board of Commissioners and the Cass County Board of Commissioners.

The full text of the regulation, a map of the restricted zone, and other helpful information is available at the Health Department's offices located at 260 South Street, Lawrence, MI, and 302 S. Front Street, Dowagiac, MI. The public may also access the information on Van Buren/Cass District Health Department website.

The West KL Avenue Landfill Group, which is comprised of Kalamazoo County, the City of Kalamazoo, Oshtemo Township, and The Upjohn Company is the applicant for the restricted zone in Almena Township. The West KL Avenue Landfill Group is remediating the West KLA Landfill in Oshtemo Township, Kalamazoo County. The remediation is being conducted under the oversight of the U.S. Environmental Protection Agency (U.S. EPA) in consultation with the Michigan Department of Environment, Great Lakes, and Energy (EGLE). Under the regulation, the West KLA Group is responsible for plugging any non-approved well and providing a suitable replacement well, at no cost to the property owner. Additional information regarding the West KL Avenue Landfill Site can be found at http://westklavelandfill.com.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June 28, 2024

West KLA Landfill Groundwater Restricted Zone (GRZ) Appendix Map

Brief History and Explanation:

The West KL Avenue Landfill is located in Oshtemo Township, in Kalamazoo County, approximately three miles to the east of Almena Township. In the 1950s, the Landfill was operated as a private landfill. From 1960 to 1979, the Landfill was operated as a municipal landfill, first by Oshtemo Township and then by Kalamazoo County. An estimated five million cubic yards of refuse, and an unknown amount of bulk liquid and drummed chemicals, were disposed of at the Landfill between 1950 and 1979.

Due to the discovery of hazardous substances in some nearby residential wells, in 1979, the Michigan Department of Environment, Great Lakes and Energy (EGLE) ordered the Landfill to cease operations, and required Kalamazoo County to provide an alternate water supply to affected residents. The Landfill remains closed and has not received any wastes since 1979. In 1982 the Landfill was added to the United States Environmental Protection Agency (EPA) National Priorities List, primarily due to risks posed by the release of hazardous substances from the Landfill to groundwater. The Landfill is currently under EPA oversight.

The KLA Group, comprised of The Upjohn Company, the City of Kalamazoo, the County of Kalamazoo, and Oshtemo Charter Township, has worked in cooperation with U.S. EPA and EGLE since 1992 to investigate and address the Site. In 2005 and 2006, the KLA Group was required by U.S. EPA to place an impermeable cap on the Landfill, which was designed to contain the hazardous substances in the Landfill and prevent them from migrating offsite. In addition to the impermeable cap, the KLA Group was required to monitor for hazardous substances that have migrated offsite. As evidenced by the KLA Group's continued groundwater monitoring, most of the hazardous substances that have migrated offsite have broken down or been diluted to the point they no longer present a concern.

While most of the hazardous substances that have migrated offsite no longer present a concern, a few hazardous substances that are resistant to biodegradation are still found in the groundwater downgradient of the Landfill at concentrations that exceed Michigan drinking water criteria. In particular, 1,4-dioxane is found in groundwater in an area extending from the Landfill to a portion of eastern Almena Township in Van Buren County. This area in Almena Township is encompassed by the West KLA Landfill GRZ, described below. In 2016, Kalamazoo County enacted a similar groundwater restricted zone for the impacted area within Kalamazoo County.

In its decision document *Explanation of Significant Differences for K&L Avenue Landfill Superfund Site* (August 2021), U.S. EPA noted the establishment of "a groundwater restricted zone in the affected area as the preferred approach to establish the needed [institutional controls] to ensure future protectiveness." Ground water quality will also continue to be monitored to confirm that the West KLA Landfill GRZ remains protective, and the GRZ will be amended, if warranted.

June 28, 2024

Van Buren County Properties included in the West KLA Landfill GRZ:

	Parcel Number
	80-01-013-024-20
	80-01-013-025-00
	80-01-013-003-10*
	80-01-012-014-11
	80-01-012-014-27
	80-01-012-024-00
	80-01-012-025-11
	80-01-012-025-25
	80-01-012-026-00
	80-01-012-027-10
	80-01-013-018-20
	80-01-013-018-10
	80-01-013-018-30
	80-01-013-022-00
	80-01-013-023-00
	80-01-013-024-00
	80-01-013-024-10
	80-01-012-012-20
	80-01-012-012-10
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	80-01-012-009-00
	80-01-012-034-20
	80-01-012-033-00
	80-01-012-029-00
	80-01-012-034-00
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	80-01-012-031-10
	80-01-012-005-00
	80-01-012-032-00
	80-01-012-034-10
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	80-01-700-010-00
	80-01-700-012-00

	Parcel Number
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	80-01-700-008-00
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	80-01-012-012-45
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	80-01-012-014-60
	80-01-012-014-70
	80-01-012-027-00
	80-01-012-028-00
	80-01-012-030-00
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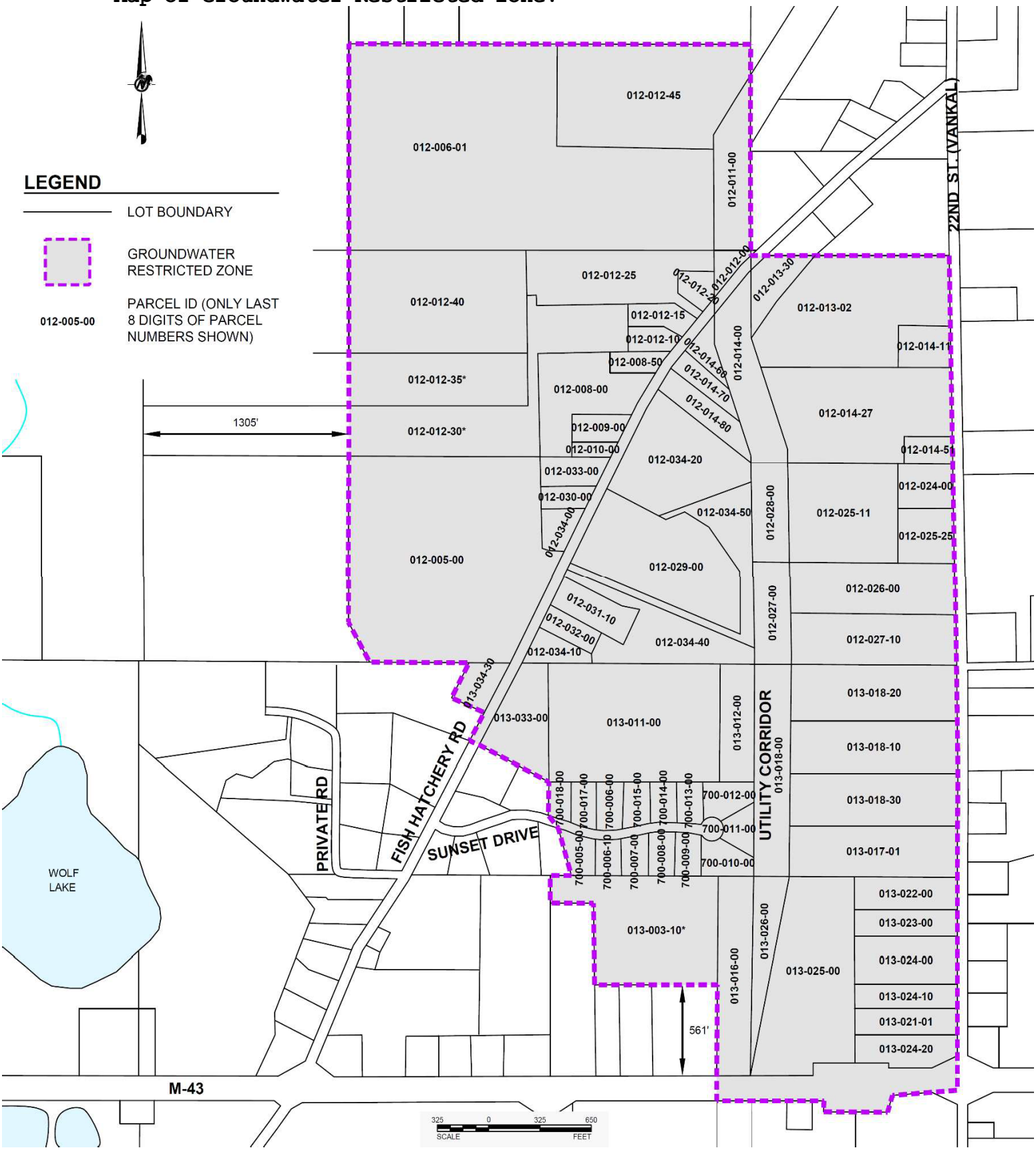
	80-01-013-012-00
	80-01-013-016-00
	80-01-013-017-01
	80-01-013-018-00
	80-01-013-026-00

***** Property only partially in restricted zone (see map)

June 28, 2024

Map of Groundwater Restricted Zone:



Parcels are shown as of December 2023 – subsequent parcel splits/combinations or changes in address or occupancy do not affect GRZ status.

Additional Requirements Specific to this GRZ:

The following requirements apply in addition to the requirements and prohibitions set forth in Section 9-16 of the Environmental Health Code.

All Wells within the GRZ must be approved by EGLE or U.S. EPA, and the Health Department. The Health Department will maintain a list of approved Wells and make that list available to the public upon request.

Wells within the GRZ are subject to the following:

1. Existing and new wells will be monitored by the RZ Applicant (the KLA Group) to ensure that the concentration of 1,4-dioxane that EGLE or U.S. EPA requires the Applicant to monitor, remains below one half of its Michigan drinking water criterion. The RZ Applicant shall notify U.S. EPA, EGLE, and the Health Department as soon as possible if the RZ Applicant is unable to secure access to sample a Well from an Owner of an Affected Premise.

2. The RZ Applicant shall replace a potable water supply Well, or connect the Affected Premises to a municipal water supply, where feasible, or provide an alternate potable water supply, if the confirmed concentration of 1,4-dioxane in the Well is at or above one half of the Michigan drinking water criterion.

3. Except as expressly authorized by EGLE and U.S. EPA, new and replacement Wells near 22nd Street shall be installed above 750 feet mean sea level (MSL) or below 600 feet MSL; and along Fish Hatchery Road and Sunset Drive below 600 feet MSL, subject to confirmation when the replacement Well is installed.

4. Potable supply Wells that are replaced are to be properly abandoned in accordance with the Environmental Health Code.

5. The RZ Applicant (the KLA Group) may be required to conduct additional work for other Landfill-related hazardous substances as required by U.S. EPA or EGLE.

June 28, 2024

Proposed amendment is in red font.

VAN BUREN/CASS COUNTY DISTRICT PUBLIC HEALTH DEPARTMENT ENVIRONMENTAL HEALTH CODE

An ordinance to amend Section 9.1 and add new Section 9.16 ("Groundwater Use Restricted Zones")to the Van Buren/Cass County District Public Health Department Environmental Health Code as set forth below.

Adopted: _____

Effective: _____

ARTICLE IX - WATER SUPPLY

9-1 Scope -- This regulation shall apply to all premises not connected to Type I or Type II public water supplies, as defined by Michigan's Safe Drinking Water Act, Act 399 of the Public Acts of 1976, and Administrative Rules, as amended, or any premises with a Well or where a person intends to install a Well (as defined in Section 9-16(B)).

9-2 Unlawful to Occupy -- No person shall occupy, permit to be occupied, or offer for rent, lease or occupancy any habitable building which is not provided with an approved water supply, which is adequate in design and capacity to meet the peak water demands of the habitable building. Any habitable building which is not served with an approved water supply may be declared unfit for habitation and may be so posted by the Health Department. The Health Department may order the owner to connect the building to a municipal water supply, if available, or to construct a water supply in compliance with this code within 30 days.

9-3 Incorporation of Other Regulations -- The Van Buren/Cass County District Public Health Department incorporates by reference and adopts as part of this code, the following:

1. The "Safe Drinking Water Act", Act No. 399 of the Public Acts of 1976, being sections 325.1001 through 325.1023 of the Michigan Compiled Laws, and the following sections of Administrative Rules promulgated pursuant to that Act: Part 1, being R325.10101 to

R325.10115, Part 4, being R 325.10401 to R 325.10409; Parts 7 and 8 being R 325.10701 to R 325.10833; and Parts 10 through 14, being R 325.11001 to R 325.11407 of the Michigan Administrative Code and any subsequent revisions thereto, and;

2. Part 127 of Act No. 368 of the Public Acts of 1978, of Michigan's Public Health Code, being sections 333.12701 through 333.12715 of the Michigan Compiled Laws, and the administrative rules promulgated pursuant to that Act, being R 325.1601 through R325.1676 of the Michigan Administrative Code, and any subsequent revisions thereto.

9-4 Water Supply Construction Permit Required -- (A) No person shall begin construction of a new water supply, or make extensive changes to existing water supplies, without first obtaining a water supply construction permit from the Van Buren/Cass County District Public Health Department. Extensive changes include replacing the well casing, removing a well casing from the ground, changing aquifers or sources of water, changing screen elevation, deepening or plugging back a bedrock well, changing the pump type, installing a liner pipe and a significant increase in the capacity of the water supply.

(B) A water supply construction permit will not be required for the installation of:

1. An irrigation well used to provide water for plants, livestock, or other agricultural process.

2. A test well used to obtain information on ground water quantity, quality, or aquifer characteristics, for the purpose of designing or operating a water supply well.

   (a) A water supply construction permit shall be required when a test well is to be converted into a production well that will provide water for drinking or domestic purposes.

3. A recharge well used to discharge water into an aquifer.

4. A dewatering well used to lower the ground water level temporarily at a construction site.

5. A heat exchange well used for the purpose of utilizing the geothermal properties of earth formations for heating or air conditioning.

6. An industrial well used to supply water for industrial processes, fire protection or similar nonpotable uses.

7. A fresh water well at an oil or gas well drilling site, when the fresh water well is to be retained after completion of the oil or gas drilling operation.

(a) A water well construction permit shall be required when a fresh water well installed at a oil or gas well drilling site provides water for drinking or domestic purposes.

(C) All Wells within a Restricted Zone must comply with Section 9-16 regulating Groundwater Use Restricted Zones regardless of whether a construction permit is required.

9-5 Late Application Penalty -- If a person fails to obtain a permit prior to beginning construction of a water supply, a penalty fee equal to the normal application fee shall be charged. Within five (5) working days of being notified of the permit violation, the person shall submit a water supply construction permit application, accompanied by the normal application fee and the penalty fee, to the Health Department. Payment of the late application penalty fee shall not exempt said person from any further penalties prescribed for violation of this code.

9-6 Priority Over Building Permits -- Where an approved municipal water supply is not available, a municipality, township or other agency shall not issue a building permit, or otherwise allow construction to commence, for any habitable building, until a water supply construction permit has first been issued by the Health Department.

9-7 Project Permit -- Where multiple wells of a similar nature are proposed to be constructed for the same project, a project permit may be issued. This shall be a single permit.

9-8 Permit Application Procedure – (A) Application Form: The water supply construction Permit application shall be made on forms provided by the Health Department.

(B) Completed Application: A completed application shall include:

1. The signature of the property owner(s) or their authorized representative.

2. The appropriate application fee.

3. A site plan of the proposed or existing water supply showing the location of the proposed source of water (well, hauled water storage tank, etc.) in relation to the buildings, property lines, all contamination sources (i.e., known, suspected or potential) and all wells whether usable or abandoned, and data which may be required by the Health Department. For water supplies utilizing other than a well as the source of water, a scaled engineering drawing may be required.

(C) Health Department Response: The Health Department shall make a written decision on a completed permit application within 14 days after the receipt of the application. If the Health Department fails to act within this 14 day period, the permit shall be considered issued as applied for.

9-9 Water Supply Construction Permits – (A) Issuance: The Health Department shall issue a water supply construction permit when the data obtained indicates that the requirements of this code and/or applicable state statutes have been or will be met, and that the quality of the ground water will not be degraded. A site evaluation shall be required prior to the issuance of the permit. The permit may impose limitations or conditions which the Health Department deems necessary to protect the public health or ground water quality.

(B) Expiration: A water supply construction permit expires and becomes invalid one year from the date of issuance.

(C) Transfer: Should the ownership of the property for which a permit has been issued changes, the permit may be transferred to the new owner, provided that no change in the scope of the project has or will occur. The transfer must be requested in writing and signed by both the new property owner and the previous permit holder. Permits are not transferable with respect to property or specific land parcel served.

(D) Avoidance: The Health Department may declare a previously issued water supply construction permit to be null and void for any of the following reasons:

1. False, inaccurate or incomplete information supplied by the permit holder.

2. A change in the plans of the permit holder affecting circumstances relative to the water supply design, location or use.

3. Acquisition of new knowledge or information about the aquifer in the area that may result in a health hazard.

(E) Denial: The Health Department may deny an application for a water supply construction permit when incomplete, inaccurate or false information has been supplied by the applicant, or when the Health Department determines that the requirements of this code and/or applicable state statues have not or can not be met. The denial shall be furnished to the applicant in writing.

9-10 Inspection -- The Health Department shall make inspections of water supplies during and/or after completion of construction. In addition, the water well record shall be reviewed not later than 30 days from the date of submission from the driller. The driller in

accordance with Section 12707 shall have submitted a water well record within 60 days after completion of the water well.

9-11 Approval -- A new water supply shall not be used until the construction and installation have been approved by the Health Department. The following conditions shall be met before the Health Department may approve a new water supply:

1. An on-site inspection has been completed by the Health Department, and the water supply is found to be in compliance with applicable code and permit requirements.

2. The Health Department has received copies of the results of the analysis of water samples indicating that raw water quality meets minimum public health standards. Water sample analysis shall include coliform bacterial and any other parameter deemed necessary by the Health Department. Analysis of water samples shall be performed by laboratories certified by the Michigan Department of Community Health. All water samples shall be collected by the Health Department or other person specifically designated by the Health Department.

9-12 Stop Work Order -- If the Health Department determines that a water supply under construction does not comply with the requirements of this code, the Health Department may issue a written stop work order. Work shall not resume until the owner and/or contractor have agreed to make corrections to comply with this code, and the Health Department rescinds the stop work order.

9-13 Plugging of Well -- The Health Department may require the plugging of a well that is constructed without a permit or is constructed in violation of this code or permit requirements.

9-14 Emergency Conditions -- In the event an emergency arises where the lack of water will result in undue hardship and the office(s) of the Van Buren/Cass County District Public Health Department is/are closed, or when the well driller is involved with repair work and it is deemed necessary to begin construction immediately on a new well, a registered well driller may begin extensive changes to or construction of a new water supply without notification or permit. The well driller shall contact the Health Department on the next regular working day and obtain a permit for such installation. The late application penalty specified in Section 10.0 of this code is waived in these cases.

9-15 Existing Water Supplies – (A) Inactive Water Supplies: A water supply which has not been in use for more than one year shall not be put back into operation unless it can be shown to be in substantial compliance with this code.

(B) Change in Use: A change in use of a premise which may result in a significant increase in the demand on the water supply shall not

be allowed unless it can be shown that the water supply is in substantial compliance with this code.

9-16 Groundwater Use Restricted Zones

(A) Purpose: The Health Department has determined that:

1. In certain areas of the counties, the use of Groundwater resources for human consumption or other purposes may constitute a public health risk and endanger the safety of the residents of Van Buren and Cass counties.

2. These identified public health risks affect parcels of land that are contained within a Restricted Zone or Zones established under this Section 9-16.

3. Restricted Zones are located on or in the vicinity of a source or location of Contaminated Groundwater, or where there is a threat from Contaminated Groundwater.

4. It is in the best interest of public health, safety and welfare to prohibit certain uses of Groundwater from Wells located in Restricted Zones found within Van Buren and Cass Counties.

(B) Definitions: The following words, terms and phrases, when used in this Section 9-16, shall have the meanings ascribed to them below:

1. **Affected Premises** – means a parcel or any part of a parcel of property located within a specified Restricted Zone where U.S. EPA or EGLE have identified Contaminated Groundwater or have required a buffer zone, as shown on an Appendix Map.

2. **Appendix Map** – means a map derived from a plat or other map showing the Affected Premises within a specific Restricted Zone. Such map shall be added or deleted by subsequent ordinance amending this section in accordance with Section 9-16(D). An Appendix Map shall contain a brief explanation and history of the Contaminated Groundwater source as well as requirements specific to that Restricted Zone. The Health Department will maintain and publish notice of the Appendix Maps, listing them by general location of the known geographical locations of the Affected Premises, and identifying the Affected Premises by address and property tax identification number or tax assessment parcel number.

3. **Contaminated Groundwater or Aquifer** -- means Groundwater in which there is present, or likely to be present, one or more hazardous substances which, individually or collectively, exceed legally applicable criteria for residential consumption of water, including but not limited to Maximum Contaminant Levels promulgated by EGLE or U.S. EPA pursuant to the Michigan Safe

Drinking Water Act or the Federal Safe Drinking Water Act, respectively, or by EGLE pursuant to Part 201 of Michigan's Natural Resources and Environmental Protection Act (NREPA); and includes "Contaminant" as defined by R 325.1602(5) of the Michigan Well Construction Code Administrative Rules.

4. **EGLE** -- means the Michigan Department of Environment, Great Lakes, and Energy, or its successor agency.

5. **Groundwater** -- means water below the land surface in the zone of saturation and capillary fringe.

6. **Influential Well** -- means a Well outside a Restricted Zone that has the potential, through pumping, to affect the horizontal or vertical migration of Contaminated Groundwater.

7. **Owner** -- means the holder of record title for a parcel of land or the occupant of a parcel of land in possession under a land contract.

8. **Permit** -- means a written document issued by the Health Department permitting the installation, construction, or extensive alteration, of a water supply system or Well as required under this regulation.

9. **Potable Water** -- means water which is free of contaminants in concentrations that may cause disease or harmful physiological effects and which is safe for human consumption.

10. **Proof of No Influence** -- means Groundwater data or other documentation or evidence demonstrating that a Well does not have the potential to affect the horizontal or vertical migration of Contaminated Groundwater or is otherwise a threat to Groundwater resources. Documentation or evidence necessary to demonstrate Proof of No Influence includes, but is not limited to: valid analytical data collected for an acceptable time period; hydrogeologic evaluations including pump tests; an analysis of the degree of protection from horizontal or vertical migration of Contaminated Groundwater within an aquifer or through geologic barriers; and Groundwater modeling.

11. **Restricted Zone (RZ)** -- means an area described in the Appendix Map(s) appended to this Health Code showing the Affected Premises for which the prohibition of Wells and the restriction on the use of Groundwater applies.

12. **RZ Applicant** -- means a person who applies or applied for the establishment of a Restricted Zone pursuant to this Section 9-16.

13. **U.S. EPA** -- means the United States Environmental Protection Agency, or its successor agency.

14. **Well** -- means an opening in the surface of the earth for the purpose of removing fresh water, or a test well, recharge well, waste disposal well, a well used temporarily for dewatering purposes during construction, as defined in Part 127, MCL 333.12701(d), Groundwater monitoring wells or wells used for remediating Contaminated Groundwater that are approved by EGLE or U.S. EPA, and also includes all of the following:

    (a) "Water Supply Well" means a well that is used to provide Potable Water for drinking or domestic purposes.

    (b) "Irrigation Well" means a well that is used to provide water for plants, livestock, or other agricultural purposes.

    (c) "Heat Exchange Well" means a well for the purpose of utilizing the geothermal properties of earth formations for heating or air conditioning.

    (d) "Industrial Well" means a well that is used to supply water for industrial purposes, fire protection, or similar non-potable uses, including a cathodic protection well.

(C) Restricted Zone: The described areas in the Appendix Map(s) appended to this Health Code showing the Affected Premises shall be the Restricted Zone(s). Additional Restricted Zones may be added by amending this Code in accordance with Paragraph (D) and all other applicable laws.

(D) Modification, Addition or Repeal of Restricted Zones:

1. An RZ Applicant, Owner, or other interested party may request in writing to the Health Department to add Affected Premises to or delete Affected Premises from a Restricted Zone, establish an additional Restricted Zone or to otherwise amend or repeal a Restricted Zone.

2. At least 30 days prior to any amendment or repeal in whole or in part of this Section 9-16, or the addition or deletion of any Appendix Map or part thereof, the Health Department shall notify EGLE, or, if the Restricted Zone is or was part of a federal Superfund site, the Health Department shall notify EGLE and U.S. EPA, which shall include U.S. EPA's assigned Remedial Project Manager, of its intent to so act. The request must describe the justification for the addition, repeal or amendment of the Restricted Zone. The Health Department shall not modify, add to, or repeal a Restricted Zone until it has received EGLE's, or, in the case of a federal Superfund site, U.S. EPA's, written and specific concurrence, as applicable, with the requested action, except that if EGLE or U.S. EPA does not respond to the request within sixty (60) days, then the Health Department may proceed with the addition, repeal, or amendment.

3. A request to delete parcels by amendment shall only be granted if it can be shown that Wells on such Affected Premises no longer pose a public health risk.

4. Before the Health Department approves a new Appendix Map, the RZ Applicant must show, to EGLE's satisfaction, that (a) the Owners of the Affected Premises have been notified of the application and the hearing date set for its consideration as set forth in Section 9-16(M); and (b) the RZ Applicant has provided for the connection to municipal water service or an EGLE-approved substitute water supply Well used to provide Potable Water for drinking or domestic purposes for all Affected Premises consistent and in compliance with Section 9-16(G).

(E) Prohibition of Wells and Groundwater Use Within a Restricted Zone: Unless specifically excepted by Paragraph (F):

1. After the effective date of this Amendment, no Well may be installed, utilized, or allowed, permitted, or otherwise provided for on any Affected Premises. The use of any Well on an Affected Premises or the use of groundwater derived from an Affected Premise is prohibited.

2. Any existing Well at the time of the enactment of this Amendment on any Affected Premises within that Restricted Zone shall be properly plugged at the expense of the RZ Applicant for that particular Restricted Zone and as provided for in Paragraph (H) and in accordance with applicable laws, regulations and ordinances, unless such existing Well falls within one of the exceptions listed in Paragraph (F).

3. Except as provided in Paragraph (F), no person shall use any Groundwater from any Affected Premises.

(F) Exceptions: The following Wells are exempt from the prohibition in subsection (E):

1. **Agency Approved Potable Wells:** If EGLE or U.S. EPA and the Health Department determines that the use of a Well for potable purposes will not allow for exposure to Contaminated Groundwater or cause migration or movement of Contaminated Groundwater into an uncontaminated aquifer, the potable Well can be granted an exception for use. The Health Department shall keep a list of Agency Approved Wells and make that list available to the public, upon request.

2. **Groundwater Monitoring/Remediation:** A Well may be used for Groundwater monitoring and/or remediation as part of a response activity or corrective action approved by EGLE or U.S. EPA.

3. **Construction Dewatering:** A Well may be used for construction dewatering if the following conditions are satisfied:

   (a) the use of the dewatering Well will not result in unacceptable exposure to Contaminated Groundwater, possible cross-contamination between saturated zones, or cause the vertical or horizontal migration of Contaminated Groundwater; and

   (b) water generated by that activity is properly handled and disposed of in compliance with all applicable laws, rules, regulations, Permit and license requirements, orders and directives of any governmental entity or agency of competent jurisdiction.

   Any contribution to migration of Contaminated Groundwater caused by the use of the Well under this exception shall be the responsibility of the person operating the de-watering Well, as provided in Part 201 of NREPA.

4. **Agency Approved Heat Exchange Well:** If EGLE determines that the use of a Well for loop geothermal heating/cooling involved in residential, industrial or commercial activities will not allow for exposure to contamination or cause migration or exacerbation of Contaminated Groundwater, and proof of that determination is delivered to the Health Department, such use of the Well under terms and conditions specified by EGLE will be allowed. All information necessary for EGLE's determination described in this subsection shall be provided by the person seeking this exception. Any vertical or horizontal migration of Contaminated Groundwater caused by the use of the Well under this exception shall be the responsibility of the person operating the Well, as provided in Part 201 of NREPA.

   (a) If the use of a Well for loop geothermal heating/cooling involved in residential, industrial or commercial activities is located on a U.S. EPA-lead Superfund Site within Van Buren or Cass counties, then the same requirements for Section 9-16(F)(4) apply for EGLE and U.S. EPA.

5. **Public Emergencies:** A Well may be used in the event of a public emergency. Notice of such use shall be provided to U.S. EPA and EGLE as soon as practicable.

6. **Agency Approved Irrigation and Industrial Wells:** If EGLE determines, based on the Proof of No Influence information provided to it by the person seeking this exception, that the use of a Well in a Restricted Zone for Irrigation or Industrial purposes will not cause unacceptable vertical or horizontal migration of Contaminated Groundwater and that water from the proposed Well is not and will not cause an unacceptable exposure to Contaminated Groundwater or otherwise pose a threat to the

environment, and proof of the determination is delivered to the Health Department, the Well may be so used.

(a) If the use of a Well in a Restricted Zone for Irrigation or Industrial purposes involved in residential, industrial or commercial activities is located on a U.S. EPA-lead Superfund Site within Van Buren and Cass counties, then the same requirements for Section 9-16(F)(6) apply for EGLE and U.S. EPA.

(G) Responsibility for Costs: Except in the case when the RZ Applicant is EGLE or a local unit of government that is not responsible or liable for the Contaminated Groundwater:

1. For Affected Premises that are not already connected to the municipal water system on the day of enactment of a Restricted Zone, the RZ Applicant for the establishment of the Restricted Zone shall be responsible for the costs to connect those Affected Premises within that Restricted Zone to the municipal water system. If it is not possible from an engineering perspective to provide service from a municipal system, or a municipal system is not available in the municipality, the RZ Applicant must show that any existing Well is either excepted from the prohibition on use under Paragraph (F) or properly plugged as outlined in Paragraph (H). The RZ Applicant retains responsibility for costs to connect Affected Premises that had a potable Well on the day of enactment of a Restricted Zone to a municipal water supply when one becomes available at any time in the future, regardless of whether potable Wells on those Affected Premises were previously granted an exception.

2. The RZ Applicant shall be responsible for all costs associated with the proper plugging of all non-excepted Wells in the Restricted Zone, as well as being responsible for all costs associated with providing a suitable replacement Well that will have EGLE and Health Department approval.

3. For Affected Premises that have a non-excepted Well on the day of enactment of a Restricted Zone that is used primarily for irrigation, the RZ Applicant for the establishment of the Restricted Zone shall be responsible for the costs to connect the irrigation piping on the Affected Premises within that Restricted Zone to the municipal water system, if desired by the Property Owner and available.

(H) Abandonment of Non-Conforming Wells: Any existing Well, the use of which is prohibited by Paragraph (E) and not granted an exception by Paragraph (F) shall be abandoned in conformance with all applicable laws, rules, regulations, Permit and license requirements, orders and directives of any governmental entity or agency of competent jurisdiction, or, in the absence of applicable law, rule, regulation, requirement, order, or

directive, in conformance with a method acceptable to the Health Department. Any non-conforming Well shall be abandoned within 30 days following establishment of the Restricted Zone.

(I) Influential Wells / Wells Affecting Contamination: No Influential Well nor a Well within a Restricted Zone may be used or installed if it will cause the unacceptable migration of Contaminated Groundwater unless it is part of monitoring and/or remediation in conjunction with a response activity or corrective action approved by EGLE or the U.S. EPA. A person seeking to install or utilize a potentially Influential Well shall provide Proof of No Influence for EGLE's approval.

(J) Prohibition on using Existing Restricted Zones for Future Closures: Once a Restricted Zone has been established by this Section, future RZ Applicants may not utilize existing Restricted Zones to achieve closure under Part 201 or Part 213 of NREPA. An RZ Applicant must petition the Health Department to add an additional Restricted Zone by amending this Environmental Health Code as outlined in Paragraph (D) in order to assure that the closures and their associated institutional controls remain separate and distinct in the event of the repeal of a portion of this Environmental Health Code.

(K) Enforcement: The Health Department shall have the authority to enforce this Section. Where, upon information available to the Health Department, it is suspected that a Well is being used on an Affected Premises in violation of this Section, the Health Department may inspect such Affected Premises and serve an appropriate notice and order to cease such violation requiring that action be taken promptly by the Owner or occupant to bring the Affected Parcel into compliance. If the Owner or occupant fails to act in accordance with such order, the Health Department may seek appropriate remedies and penalties.

(L) Severability: If any section, clause, or provision of this Section shall be declared to be unconstitutional, void, illegal, or ineffective by any Court of competent jurisdiction, such section, clause, or provision declared to be unconstitutional, void, or illegal shall thereby cease to be a part of this Section, but the remainder of this Section shall stand and be in full force and effect.

(M) Notification to Affected Premises Owners in Restricted Zone: After the Health Department sets the public hearing concerning the passing of a proposed Restricted Zone, the RZ Applicant shall cause a written notice of the hearing to be sent by first class mail to all persons having an interest as Owner, tenant, easement holder, or mortgagee in any of the Affected Premises included in the proposed Restricted Zone. The notice:

1. Shall include a brief statement regarding the application designed to inform the recipients of its main features and potential impact on the recipients in general.

2. Shall be mailed at least ten days prior to the hearing.

3. Shall also be published in plain language in a newspaper of general circulation in the appropriate area at least seven (7) days before the hearing.

(N) Notification of Intent to Amend, Lapse, or Repeal: At least thirty (30) days prior to adopting a modification to the text of this Section, or prior to lapsing or revocation of this Section, the Health Department shall notify EGLE of its intent to so act, and U.S. EPA if the modification, lapse, or revocation impacts a U.S. EPA-lead Superfund site within Van Buren or Cass Counties. Notifications related to modification, addition, or repeal of Restricted Zones are governed by Section 9-16(D).

(O) Notification to the Local Unit of Government: The local unit of government in the area of the Restricted Zone shall be notified in writing by the RZ Applicant of the public hearing for the consideration of the proposed Restricted Zone not less than five days prior to the meeting; the RZ Applicant must also provide notice to the local unit of government of the potential passage of the Restricted Zone not less than 5 days before the effective date of the passage.

(P) Publication and Recording:

1. The Health Department shall publish notice of a Restricted Zone in a newspaper of general circulation within thirty (30) days of passage.

2. If the release, for which a Restricted Zone is sought, is regulated pursuant to Part 201, then the Restricted Zone shall be published and maintained in the same manner as zoning ordinances.

3. If the release, for which a Restricted Zone is sought, is regulated pursuant to Part 213, then the Restricted Zone shall be filed by the RZ Applicant with the register of deeds as an Amendment affecting multiple properties.

(Q) Appendix Maps:

1. West KLA Landfill Site, Almena Township. For purposes of the West KLA Landfill Site, the West KL Avenue Landfill Group, and each of its individual members, being The Upjohn Company, the City of Kalamazoo, the County of Kalamazoo, and Oshtemo Township, are collectively and individually the RZ Applicant.

REGION 5
CHICAGO, IL 60604

July 16, 2024

VIA ELECTRONIC MAIL

Danielle Persky
Health Officer (Executive Director)
Van Buren/Cass District Health Department
260 South Street, Lawrence, MI 49064

Dear Ms. Persky:

The United States Environmental Protection Agency (U.S. EPA) has reviewed the proposed ordinance to amend Section 9.1 and add new Section 9.16 ("Groundwater Use Restricted Zones") to the Van Buren/Cass County District Public Health Department Environmental Health Code, attached. The U.S. EPA has also reviewed the Appendix Map dated June 28, 2024 and referenced in Section 9-16(Q)(1), attached. Based on this review, the U.S. EPA has determined that the proposed ordinance and Appendix Map are consistent with the August 2021 Explanation of Significant Differences (2021 ESD) for the K&L Avenue Landfill Superfund Site (the Site), located in Oshtemo Township, Kalamazoo County, Michigan. The U.S. EPA also concurs that the Restricted Zone (RZ) Applicant has, as of the date of this letter, provided for approved substitute wells for the Affected Premises as required by the proposed ordinance.

The Site's 1990 Record of Decision (ROD) and subsequent amendments in 2003 and 2005 do not address alternate water supply requirements and necessary groundwater institutional controls for impacted properties outside of Kalamazoo County, such as those in Van Buren County. The 2021 ESD establishes alternate water supply and groundwater institutional control requirements for impacted properties in Van Buren County where no municipal water supply source is available. The 2021 ESD also documents a decision to allow the use of properly located replacement wells as an alternate water supply source and potable groundwater use at properties within the proposed groundwater restricted zone area, provided that data and other records demonstrate that specific listed criteria continue to be met.

Please feel free to contact me with any questions or concerns. I can be reached via telephone at (312) 886-3387 or by email at mcglown.anthony@epa.gov.

Sincerely,

Anthony McGlown
Remedial Project Manager

cc: Alyssa Graveline, U.S. EPA
Gillian Asque, U.S. EPA
Walelign Wagaw, EGLE

Warner Norcross+ Judd LLP

July 18, 2024

Mr. Karl Butterer
Foster Swift Collins & Smith PC
1700 East Beltline NE Suite 200
Grand Rapids MI 49525-7044

Via E-Mail

Re: **West KLA Landfill Superfund Site; Proof of Financial Security**

Dear Karl:

In relation to the proposed West KLA Groundwater Restricted Zone, please find attached the West KLA Group's current certificate of insurance fulfilling its financial responsibility requirement under the federal court Consent Decree (*United States v. The Upjohn Company et al.,* 1-92-cv-00659) governing the remediation. Specifically, the Consent Decree requires that my clients keep in place financial security in the amount of $16,400,000 in order to ensure completion of all work required by the decree, which ultimately includes the work necessitated by the proposed ordinance.

Please do not hesitate to call or write with questions or comments.

Very truly yours,

Daniel K. DeWitt

Daniel K. DeWitt | Partner
D 616.752.2208
E ddewitt@wnj.com
150 Ottawa Avenue, N.W., Suite 1500
Grand Rapids, MI 49503

Certificate of Insurance for CERCLA Remedy Implementation

Name and Address of Insurer (herein called the "Insurer"):

Blue Whale Re Ltd.
100 Bank Street, Suite 630
Burlington, VT 05401

Name and Address oflnsured (herein called the "Insured"):

Pharmacia & Upjohn Company LLC
7000 Portage Road
Kalamazoo, MI 49001

Name of Additional Named Insured:

The United States Environmental Protection Agency or any successor person or state agency designated by the Regional Administrator or any agency that becomes responsible for the supervision of the CERCLA Remedy Implementation.

Facilities Covered:

West KL Avenue Landfill
Kalamazoo, Michigan
Consent Decree 1:92:CV:659
Amount of Insurance for CERCLA Remedy Implementation: $16,400,000

Face Amount: $16,400,000
Policy Number: 361-24CPKLAL
Effective Date: April 30, 2024

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for "CERCLA Remedy Implementation" for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 40 CFR 264.143(e), 264.145(e), 265.143(d), and 265.145(d), as applicable and as such regulations were constituted on the date shown immediately below, modified to replace the terms "post closure" and "closure" with "CERCLA Remedy Implementation". It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Additional Named Insured, the Insurer agrees to furnish to the Additional Named Insured a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 40 CFR 264.151(e) as such regulations were constituted on the date shown immediately below, modified to replace the terms "post closure" and "closure" with "CERCLA Remedy Implementation".

Authorized Repre tative for
Blue Whale Re Ltd.
100 Bank Street, Suite 630
Burlington, VT 05401

Signature of witness or notary

April 30, 2024
Date

BLUE WHALE RE LTD.
100 BANK STREET, SUITE 630
BURLINGTON, VERMONT 05401
"the Company"

CERCLA REMEDY IMPLEMENTATION POLICY

POLICY NUMBER 361-24CPKLAL

THIS IS A CLAIMS MADE POLICY. COVERAGE IS LIMITED TO LIABILITY FOR CLAIMS FIRST MADE AGAINST AN INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD. PLEASE READ THE POLICY CAREFULLY.

DECLARATIONS

Item 1. Named Insured: Pfizer Inc. and/or all of its subsidiary and affiliated entities (including, but not limited to corporations, partnerships or joint ventures), including any former subsidiary, associated or financially controlled company, as may now or hereafter be constituted or acquired, including any other entity (including but not limited to any corporation, joint venture or partnership) for which the Named Insured has assumed control or responsibility.

First Named Insured
Pharmacia & Upjohn Company LLC
7000 Portage Road
Kalamazoo, MI 49001

Additional Named Insured
The U.S. Environmental Protection Agency or any successor person or state agency designated by the Regional Administrator or any agency that becomes responsible for the supervision of the CERCLA Remedy Implementation.

Item 2. Mailing Address:
66 Hudson Boulevard East
New York, NY 10001-2189

Item 3. Policy Period: April 30, 2024 to April 30, 2025 at 12:01AM Standard Time at the Named Insured's address shown above.

Item 4. Coverage: This Policy only provides coverage for CERCLA Remedy Implementation Costs as set forth in the Policy.

Item 5: Covered Location:
West KL Avenue Landfill
West KL Avenue
Oshtemo Township, Kalamazoo County
Kalamazoo, MI
Consent Decree: 1:92:CV:659

Item 6: Consent Decree Consent Decree entered in Civil Action No. 1:92:CV:659, United States of America v. The Upjohn Company, et al., in the U.S. District Court for the Western District of Michigan, on or about November 17, 1992, as amended.

Item: 7. Limits Of Liability (respective):

a) $16,400,000 CERCLA Remedy Implementation Costs

b) $16,400,000 CERCLA Remedy Implementation Face Amount

Item 8. Deductible: $ 0 Each Occurrence

Item 8. Premium: $53,300

BLUE WHALE RE LTD.

By: ______________________
Authorized Representative

CERCLA REMEDY IMPLEMENTATION POLICY

THIS IS A "CLAIMS-MADE AND REPORTED" POLICY. THE POLICY REQUIRES THAT A CLAIM BE MADE UPON THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF ANY. PLEASE READ CAREFULLY.

In consideration of the payment of the premium, in reliance upon the statements in the Declarations and Application made a part hereof and subject to all the terms of this Policy, the Company agrees with the NAMED INSURED as follows:

SECTION I. COVERAGES

1. Insuring Agreement.

To pay on behalf of the **Insured,** or as applicable under the Policy, the **Additional Named Insured,** subject to the terms and Limits of Liability of this Policy, **CERCLA Remedy Implementation Costs** that the **Insured** is legally obligated to pay by reason of a **CERCLA Remedy Implementation** at the **Covered Location** in accordance with the **Record of Decision** and the **Consent Decree. Claims** for such **CERCLA Remedy Implementation Costs** must be first reported in writing to the Company during the **Policy Period.** This coverage applies only to **CERCLA Remedy Implementation Costs** that first take place on or after the commencement of the **Policy Period.**

SECTION II. EXCLUSIONS

This insurance does not apply to expenses, losses, liabilities, or damages of any kind incurred by, accruing to, or alleged to be liabilities of the **Insured,** by reason of:

A. Any criminal or civil penalties imposed by reason of the violation of any law or regulation.

B. Any third-party claims for **Bodily Injury** or **Property Damage.**

C. Any expenses, charges or costs resulting from the defense and/or investigation of any liability or obligation for **CERCLA Remedy Implementation Costs** hereunder. However, this exclusion shall not apply to any investigations required for compliance with a **CERCLA Remedy Implementation** at a **Covered Location** including but not limited to investigation of groundwater quality, hydrogeology, chemical fate and transport.

SECTION III. CLAIMS PROVISIONS

A. The **Insured** shall cooperate with the Company and, upon the Company's request, assist in obtaining information relative to any **Claim** made. The **Insured** shall not, except at its own cost, voluntarily make or approve any payments, assume any obligations or incur any expenses relating to a **CERCLA Remedy Implementation** which are not in accordance with the **Record of Decision** and the **Consent Decree** without the Company's written permission.

B. Any notices required by these conditions shall be sent to:

Blue Whale Re Ltd.
100 Bank Street, Suite 630
Burlington, VT 05401

C. The **Insured,** or any other person authorized by the **Additional Named Insured** to conduct **CERCLA Remedy Implementation** if there is **Financial Default,** may request reimbursements for **CERCLA Remedy Implementation Costs** by submitting itemized bills to the **Additional Named Insured.** Within sixty (60) days after receiving bills for **CERCLA Remedy Implementation Costs,** the **Additional Named Insured** will instruct the Company to make reimbursements for a **Claim** in those amounts as the **Additional Named Insured** specifies in writing, if the **Additional Named Insured** determines that the **Claim** is in accordance with the **Consent Decree** and the **Record of Decision.** The Company, upon receipt of a **Claim,** shall review and issue payment as instructed by the **Additional Named Insured** for all undisputed **CERCLA Remedy Implementation Costs** within thirty (30) days of receipt of the **Claim** and all necessary information verifying the amount of the **CERCLA Remedy Implementation Costs** for which reimbursement is being sought, subject to the **CERCLA Remedy Implementation Face Amount.** The Company further agrees to notify the **Insured** and the **Additional Named Insured** in writing within thirty (30) days of receipt of any **Claim** made for **CERCLA Remedy Implementation Costs** what amount, if any, of the **Claim** is in dispute and what back up information is needed to resolve the dispute. The Company, the **Insured** and the **Additional Named Insured** agree to cooperate to resolve any dispute, and if a dispute cannot be resolved promptly, to submit the same to binding arbitration upon the request of the **Insured** or the **Additional Named Insured** on or after the expiration of thirty (30) days after the submission of any statement or bill of expenditures for **CERCLA Remedy Implementation Costs** by the **Insured** or the **Additional Named Insured,** which arbitration shall be conducted, in accordance with the rules and regulations outlined in the American Arbitration Association guidelines.

D. In the event of **Financial Default** by the **Insured** and upon written direction of the **Additional Named Insured,** the Company guarantees that funds, up to the **CERCLA Remedy Implementation Face Amount** shown in the Declarations, will be available to provide **CERCLA Remedy Implementation Costs** at the **Covered Location** to such party or parties as the **Additional Named Insured** specifies in accordance with the **Consent Decree** and the **Record of Decision.**

SECTION IV. DEFINITIONS

A. **Additional Named Insured** means the person or entity designated as such in Item 1 of the Declarations.

B. **Bodily Injury** means bodily injury, sickness, disease, fear of sickness or disease, mental anguish and mental injury, emotional distress, psychic injury, or disability including care, loss of services or death resulting therefrom.

C. **Claim** means a request by the **Insured,** or the **Additional Named Insured** in the event of **Financial Default,** for payment of **CERCLA Remedy Implementation Costs** by reason of a **CERCLA Remedy Implementation** at a **Covered Location** in accordance with the applicable **Record of Decision** and **Consent Decree** provided that such request is first submitted in writing to the **Additional Named Insured** for approval and reported in writing to the Company during the **Policy Period.**

D. **CERCLA** means the Comprehensive Environmental Response, Compensation and Liability Act (42 USC §9601 et seq).

E. **CERCLA Remedy Implementation** means the investigation, cleanup or remediation of a release of a hazardous substance required pursuant to the **Record of Decision** and **Consent Decree** for the **Covered Location.**

F. **CERCLA Remedy Implementation Costs** means all costs associated with **CERCLA Remedy Implementation,** as identified in the **Record of Decision** and **Consent Decree.**

G. **CERCLA Remedy Implementation Face Amount** means the Company's maximum Limit of Liability for **CERCLA Remedy Implementation Costs** for the **Covered Location.**

H. **Consent Decree** means the legal document as listed in the Policy Declarations that formalizes the agreement between the **Additional Named Insured** and the **Insured** through which the **Insured** will conduct all or part of **CERCLA Remedy Implementation** at the **Covered Location.**

I. **Covered Location** means the facility designated in the Declarations which is being remediated in accordance with the **Record of Decision** and **Consent Decree.**

J. **Financial Default** means the failure of the **Insured** to pay properly incurred **CERCLA Remedy Implementation Costs,** failure or refusal by the **Insured** to perform the **CERCLA Remedy Implementation,** or a filing for bankruptcy protection by the **Insured** under Title 11 of the United States Code.

K. **First Named Insured** means the person or entity designated as such in Item 1 of the Declarations.

L. **Insured** means the **Named Insured, First Named Insured** and any trustee, principal, member, director, officer, partner or employee of either the **Named Insured** or **First Named Insured** while acting within the scope of his/her duties as such, and any person or entity designated as a **Named Insured** or **First Named Insured** by an endorsement issued to form a part of this Policy.

M. **Named Insured** means the person or entity designated as such in Item 1 of the Declarations.

N. **Policy Period** means the period set forth in the Declarations, or any shorter period arising as a result of cancellation of this Policy.

0. **Property Damage** means:

1. physical injury to or destruction of tangible property, including the personal property of third parties; or

2. loss of use of such property that has not been physically injured or destroyed; or

3. diminished third party property value.

P. **Record of Decision** means the official decision document prepared by the **Additional Named Insured** that explains the cleanup alternative to be used at the **Covered Location.**

SECTION V. LIMIT OF LIABILITY AND DEDUCTIBLE

1) With respect to the **CERCLA Remedy Implementation** at the **Covered Location,** the Company's total liability for all **CERCLA Remedy Implementation Costs:**

a. Shall not exceed the Limit of Liability for the **CERCLA Remedy Implementation Face Amount** as shown in the Declarations;

b. Subject to (a), the total Policy liability for all **CERCLA Remedy Implementation Costs** at the **Covered Location** shall not exceed the Limit of Liability for the **Covered Location** shown in the Declarations as the **CERCLA Remedy Implementation Face Amount.**

regardless as to the number of:

i. facilities shown in the Declarations;

ii. **Insureds** under this Policy; or
iii. **Claims** made or suits brought.

SECTION VI. TERRITORY

This Policy only applies to a **Claim** for **CERCLA Remedy Implementation Costs** arising from a **CERCLA Remedy Implementation** incurred at the **Covered Location** and only if such **Claims** are made or brought in the United States of America.

SECTION VII. CONDITIONS

A. **Inspection and Audit** - The Company shall be permitted but not obligated to inspect, sample and monitor on a continuing basis the **Covered Location** at any time. Neither the Company's right to make inspections, sample and monitor, nor the actual undertaking thereof nor any report thereon, shall constitute an undertaking, on behalf of the **Insured** or others, to determine or warrant that the **Covered Location** or the operations at the **Covered Location** are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation. The Company or its designee may examine and audit the **Insured's** books and records at any time during the **Policy Period** and extensions thereof, as far as they relate to the subject matter of this insurance, and within any periods of **CERCLA Remedy Implementation** for which coverage is provided whether insurance provided by this Policy has expired.

B. **Cancellation** - The Company may not cancel, terminate or fail to renew the Policy except for failure to pay the premium. The automatic renewal of the Policy must, at a minimum, provide the **Insured** with the option of renewal at the face amount of the expiring Policy. If there is a failure to pay the premium, the Company may elect to cancel, terminate, or fail to renew the Policy by sending notice by certified mail to the **Insured** and the **Additional Named Insured.**

This Policy may be cancelled by the **Named Insured** by surrender hereof to the Company or any of its authorized agents or by mailing to the Company written notice stating the date thereafter the cancellation shall be effective. The mailing of notice in the manner set forth below shall be sufficient proof of notice.

Cancellation, termination, or failure to renew may not occur, however, during the one hundred twenty (120) days beginning at the receipt of the notice by both the **Additional Named Insured** and the **Insured** as evidenced by return receipt. Cancellation, termination or failure to renew may not occur and the Policy will remain in full force and effect in the event that on or before the date of expiration:

1. The **Insured** is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

2. The premium due is paid in full.

C. **Representations** - By acceptance of this Policy, the **Named Insured** agrees that the statements in the Declarations and Application(s) are their representations, that this Policy is issued in reliance upon the truth of such representations, and that this Policy embodies all agreements existing between the **Named Insured** and the Company or any of its agents relating to this insurance.

D. **Action Against Company** - No third-party action shall lie against the Company, unless as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial, expedited declaratory proceeding or by written agreement of the **Insured,** the claimant or **Additional Named Insured** and the Company, as applicable.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the

insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the Company be impleaded by the **Insured** or his legal representative. Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.

E. **Assignment** - This Policy may be assigned to another organization, corporate entity with the same parent or a third-party corporate entity, with the consent of the Company, which consent shall not be unreasonably withheld, delayed, or denied.

F. **Changes** - Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.

G. **Other Insurance** - This insurance is primary with respect to other valid and collectible insurance available to the **Named Insured.**

H. **Mutual Construction** - The Company and all **Insureds** agree that the rule of contract construction that ambiguities are to be construed against the drafter shall not apply to any dispute arising under this Policy. Any such ambiguity shall be construed to give effect to the mutual intent of the parties as expressed herein.

I. **Warranty** - The Company has issued this Policy to provide financial assurance for **CERCLA Remedy Implementation Costs** for the **Covered Location** in accordance with the **Record of Decision** and **Consent Decree.** The Company hereby warrants that the Policy conforms in all respects with the requirements of 40 CFR 264.145, modified to replace the terms "post-closure" and "closure" with **"CERCLA Remedy Implementation",** as applicable, and as such regulation was constituted on the inception date of the Policy. It is agreed that any provision of the Policy inconsistent with such regulation is hereby amended to eliminate such inconsistency, except that the Limits of Liability shall not be amended and the terms "post-closure" and "closure" are replaced with "CERCLA Remedy Implementation".

SECTION VIII. SERVICE OF SUIT

A. **Service of Suit** - It is agreed that in the event of any dispute under the Policy in which the **Additional Named Insured** or the **Named Insured** is a party, the Company, at the request of the **Additional Named Insured** or the **Named Insured,** will submit to the jurisdiction of the United States District Court for the Western District of Michigan. It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, Blue Whale Re Ltd., 100 Bank Street, Suite 630, Burlington, VT 05401, or his or her representative, and that in any suit instituted against the Company upon this Policy, the Company, will abide by the final decision of such court or of any appellate court in the event of any appeal.

IN WITNESS WHEREOF, the Company has caused this Policy to be signed by its president and secretary and signed on the Declarations page by a duly authorized representative or countersigned in states where applicable.

Chunyasa O'Toole

Authorized Representative