

**KALAMAZOO TOWNSHIP  
ZONING BOARD of APPEALS MEETING  
AGENDA  
WEDNESDAY JANUARY 18, 2023 6:00 PM**

The agenda for the *meeting* will include the following items:

- #1 Call to order
- #2 Roll call
- #3 Approval of agenda for January 18, 2023
- #4 Approval of Minutes:
  - 4a. December 21, 2022
- #5 Public Hearings
  - 5a. 2016 N. Pitcher Street – variance request for: dimensional setback and height modification.
- #6 Old Business
  - 6a. None
- #7 New Business
  - 7a. 2016 N. Pitcher Street – Graphic Packaging - Variance Review.
- #8 Other matters to be reviewed by the ZBA
  - 8a. Comments from the public on matters not already addressed.
  - 8b. Correspondence received
  - 8c. Zoning Board of Appeals members' comments.
  - 8d. Report of the Planning Commission member.
- #9 Adjournment

**Public Hearings.** The following rules of procedure shall apply to public hearings held by the ZBA:

1. Chairperson opens the public hearing and announces the subject.
2. Chairperson summarizes procedures/rules to be followed during the hearing.
3. Applicant presents request.
4. Township zoning administrator/planning consultant presents a summary or analysis of the request.
5. Persons wishing to comment on the request are recognized.
6. Chairperson closes public hearing.
7. ZBA deliberates and decides and action is taken.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48

**Charter Township of Kalamazoo  
Minutes of a Zoning Board of Appeals Meeting  
Held on December 21, 2022**

A regular meeting of the Kalamazoo Charter Township Zoning Board of Appeals was conducted on December 21, 2022, commencing at 6:00 p.m. at the Township Hall.

**Present were:**

Nicolette Leigh  
Fred Nagler  
Robert Mihelich  
Shawn Blue  
James Short, Chairperson

**Absent was:** Lisa Maoiery (Alternate); and Mariann Sydlik (Alternate).

Also present were Township Zoning Administrator and Planner Kyle Mucha, Township Manager Dexter Mitchell; Township Attorney Robert Thall, and 2 members of the audience.

**Call to Order**

Short called the meeting to order at 6:00 p.m. and called the roll.

**Roll Call and Recognition of Visitors**

The chairperson welcomed those in attendance.

Blue moved, supported by Short to excuse the two absent members. The motion passed unanimously.

**Approval of the Agenda for the December 21, 2022 Zoning Board of Appeals Meeting**

A motion was made, and duly seconded to approve the agenda with one addition: to add "Election of Officers" to agenda item #7, New Business. The motion passed unanimously.

**Approval of Zoning Board of Appeals' Meeting Minutes of the June 15, 2022.**

The next item on the agenda was approval of the June 15, 2022 Zoning Board of Appeals' meeting minutes. Copies of the draft meeting minutes were provided to the Members in their agenda packets. Thall stated that since a decision of the zoning board of appeals was made and handed to the applicant at the time of the meeting, the appeal period had ended 30 days after the June meeting. Nagler moved, supported by Mihelich to approve the minutes as submitted. The motion passed unanimously.

1 **Public Hearing**

2

3 The next item on the agenda was a public hearing and consideration of the request from Byce and  
4 Associates on behalf of Kalsec, 3713 West Main Street for a 17-foot variance from the 35-foot height  
5 limitation in order to permit it to construct a 12,774 square foot warehousing and processing building  
6 expansion to an existing warehouse at 52-feet in height. The property is located in the PUD district  
7 zoning classification.

8

9 Short opened the public hearing on Kalsec’s requested variance at 6:14 p.m, and requested that the public  
10 hearing procedure be modified by swapping steps 3 and 4, so the Township Zoning Administrator could  
11 give an overview of the project prior to hearing from the applicant. The Board unanimously supported  
12 changing the order of the public hearing.

13 Mucha explained that the variance was requested in order to permit Kalsec to place mechanical  
14 equipment needed for on-site processing into the building. The property acres in area and the entire  
15 Kalsec campus is about 133 acres in size. Mucha explained that the ordinance permits a building height  
16 of 40-feet in the I-1 Light Industrial District; and 45-feet in the I-2 General Industrial District. The use, he  
17 said, would be considered industrial in nature with a 40-foot height limitation in that district. Mucha  
18 indicated that the proposed variance would not likely have an impact on neighboring properties, due to  
19 its location in the southern portion of the Planned Unit Development, where there is natural vegetation  
20 and screening. Allowing the manufacturing to take place in the proposed location would reduce the  
21 need for the applicant to expand elsewhere, on- or off-site.

22 Much explained that a lesser variance would not be much assistance, since the needed height was to  
23 accommodate the manufacturing equipment within the building addition. Mucha summed up his staff  
24 report, indicating that the need for the variance was self-created, that other industrial uses allow height  
25 limitations of greater than 35-feet; and that the proposed variance does not appear to be detrimental to  
26 the other properties in the area.

27 Short asked Mucha whether there is still a residence located on the subject property. Ty Weiss from Kalsec  
28 was in attendance and answered that there is still a residence on the property. Leigh asked if changes to  
29 the PUD Agreement were needed to approve this variance. Mucha explained that because the request is  
30 a variance from the ordinance requirements and not the PUD agreement requirements, no amendment  
31 to that agreement is necessary for this variance. Attorney Thall asked whether a site plan would have to  
32 get approved for the new building expansion. Mucha confirmed that site plans would have to be  
33 submitted and approved.

34 Leigh asked if the requested building height was measured from the ground to the peak of the building.  
35 Weiss explained that the land the building would be situated on was on a slope, and the building would  
36 have a single sloped roof to match that slope. Attorney Thall noted that approval of the variance should  
37 be conditioned on site plan approval of the Planning Commission.

38 Next, Weiss was asked by the Board to give a brief explanation of the variance request and their proposed  
39 project. Weiss explained that the project was a 12,800-foot addition, which will be divided into processing

1 space on the eastern portion of the project for CO2 extraction and storage/warehousing space on the  
2 west side of the project. Short asked what they were going to extract CO2 from, and Weiss answered that  
3 they would primarily be processing hop cone extractions. Leigh asked if they are extracting or adding CO2  
4 to the hops, and Weiss explained that using CO2 was a cleaner method of extracting the desired elements  
5 from the hops. Weiss noted the Kalsec recently became a B-Corporation, meaning the company has met  
6 verified standards of social and environmental impact. Leigh asked if the new addition would be visible  
7 from W. Main Street. Weiss answered that it would not be visible because it was located as far from the  
8 road as possible at that site.

9 Mucha stated that there were no public comments received. Blue asked if Kalsec owned all the property  
10 south of the project, which Weiss confirmed the company did own. Short asked how many employees  
11 Kalsec has. Weiss stated the company has 500 employees globally, including 400 here in Kalamazoo.

12 With there being no further comments, Short closed the public hearing at 6:24 p.m.

13 The Board then went into deliberations regarding whether the variance request met the Township Zoning  
14 Ordinance standards for granting a variance contained in the Zoning Ordinance at Section 26.05B.4.a. The  
15 first standard was whether strict compliance with the zoning regulation would unreasonably prevent the  
16 owner from using the property for a permitted purpose or render ordinance conformity unnecessarily  
17 burdensome. Nagler stated that he felt they should defer to the staff report, and determined that this  
18 standard was met. Next, the Board considered whether the variance will do substantial justice to the  
19 applicant as well as other property owners. Nagler stated that because there is no impact on surrounding  
20 neighbors and the new construction required the additional height, and as such, felt this standard was  
21 met. Leigh opined that there was no substantial justice nor detrimental effect because while there were  
22 no neighboring properties to be affected, justice was not necessarily served by granting the variance; she  
23 viewed the effect of granting this request as closer to neutral on the question. Nagler again noted the lack  
24 of impact on the neighbors. Third, the Board discussed whether a lesser variance would not give  
25 substantial relief to the applicant and/or be consistent with justice to other property owners. The Board  
26 again discusses the lack of detrimental effect, and determined that a lesser variance would not be  
27 sufficient for the applicant. Finally, the Board evaluated whether the need for a variance was self-created.  
28 Mucha again noted that the staff report found the harm to be self-created. Nagler opined that it was not  
29 self-created because the Township adopted the standards that the applicant was seeking relief from,  
30 through no fault of the applicant. Attorney Thall chimed in to state that not all of the four standards had  
31 to be met, if the Board felt that the weight of the standards weighed in favor of granting the variance.  
32 Leigh stated she thought it was a self-created issue; but one born out of advancement. Leigh stated that  
33 sometimes a standard that was proper 10 or 20 years ago may need to have exceptions made to account  
34 for new technologies.

35 Blue made a motion, supported by Leigh to approve the variance request subject site plan approval from  
36 the Township Planning Commission. The motion passed unanimously.

37 **Old business.**

38 None.

1 **New Business**

2 **Election of Officers**

3

4 This was Short’s last meeting, as he was retiring after many years of faithful service to the Township as a  
5 member and chairperson of the Zoning Board of Appeals. The Zoning Enabling Act prohibits the board  
6 member (Moairey) from serving as chairperson of the Zoning Board of Appeals. Nagler serves as mutual  
7 member and chairman of the Planning Commission. As such, the members should not elect him as  
8 chairperson of the ZBA. Nagler took nominations from the floor.

9

10 Blue moved, supported by Nagler to elect Leigh as chairperson of the ZBA and Blue as the vice chair, and  
11 to make no appointment of a secretary at this time. The motion passed unanimously.

12

13 **Comments of ZBA members.**

14 Leigh asked if the Board could receive a copy of the draft meeting minutes sooner than they had been.  
15 Attorney Thall noted that minutes have to be prepared within eight (8) days of a meeting. Mucha  
16 confirmed minutes can be sent to Board members sooner and that they would be going forward.

17 Leigh also wanted to permanently change the public hearing procedure so that the Zoning Administrator  
18 always presents prior to the applicant. Board agreed to make this change going forward.

19 Nagler thanked James Short, for over three decades of service on the Kalamazoo Township ZBA. Short  
20 said it has been an honor and a privilege to serve, and thanked his fellow Board members.

21 **Report of the PC member.**

22 Nagler reported on the planning commission’s activities.

23 **Report of the Planner/Zoning Administrator.**

24

25 **Adjournment.**

26

27

**SYNOPSIS OF ACTIONS**

28

29 The Kalamazoo Township Zoning Board of Appeals undertook the following actions at the  
30 December 21, 2022 meeting:

31

- 32 • Granted a 17-foot height variance to Kalsec at 3713 W. Main Street; and
- 33 • Elected new officers for 2023.
- 34



# MCKENNA

January 10, 2023

Hon. Members of the Zoning Board of Appeals  
Kalamazoo Charter Township  
1720 Riverview Drive  
Kalamazoo, Michigan 49004

**SUBJECT: ZBA Report**

**#23-01 Variance Request / Setback & Height Request**

**APPLICANT: Hurley & Stewart (Todd Hurley) – Applicant/Authorized Agent; Graphic Packaging International (Business Entity & Property Owner)**

**SECTION: Section 20.03.A.3a – Development Standards; Section 5.03.C.1. – Landscaping Berm Dimensions**

**LOCATION: 2016 North Pitcher Street, Kalamazoo MI 49009 (Parcel ID: 06-10-205-010)**

**REQUEST: To obtain relief from the setback requirement in the I-2, General Industrial District of 150 feet; to obtain relief from the landscaping berm height maximum of three (3) feet:**

*All construction of a semi-trailer storage yard facility for warehousing, with a setback of 50 feet where a minimum of 150 is required. If approved, this would result in a variance of 100 feet.*

*Allow the construction of landscaping berms that are six (6) feet in height where a maximum of three (3) feet is permitted. If approved, this would result in a variance of three (3) feet.*

Dear Members of the Zoning Board of Appeals:

We have reviewed the above referenced application regarding the variance requests pertaining to the construction of a semi-trailer storage facility for warehousing purposes, located at 2016 N. Pitcher Street, as it pertains to the two aforementioned requests, submitted by the engineering firm *Hurley & Stewart*, on behalf of their client, Graphic Packaging International.

### VARIANCE REQUEST SUMMARY

The applicant, Hurley & Stewart, on behalf of the business entity Graphic Packaging International, is proposing to obtain relief from Zoning Ordinance standards as it relates to the minimum setback requirements in the I-2, General Industrial District as it pertains to development standards per Section 20.03.A.3a. regarding outside storage and relief from Section 5.03.C.1 as it pertains to the maximum height of landscaping berms.



The applicant proposes to develop the property at 2016 North Pitcher Street for outside storage/warehousing of

#### HEADQUARTERS

235 East Main Street  
Suite 105  
Northville, Michigan 48167

O 248.596.0920  
F 248.596.0930  
MCKA.COM

Communities for real life.



semi-trailers in direct correlation to the manufacturing & production facility located immediately south of the subject parcel.

### EXISTING SITE CONDITIONS

The subject parcel is approximately 52.6 acres in size. The site is currently zoned I-2, General Industrial. Warehousing is a permitted use within the I-2 District, per Section 20.02.A. of the Kalamazoo Township Zoning Ordinance. The site is currently being utilized as a staging area for construction material, including construction debris and excavated soils from a recent building/site expansion located within the City of Kalamazoo jurisdictional boundaries. The subject site has not received approval from the Kalamazoo Township Planning Commission for use of the site as a storage/warehousing use.

### STANDARDS FOR VARIANCE APPROVAL

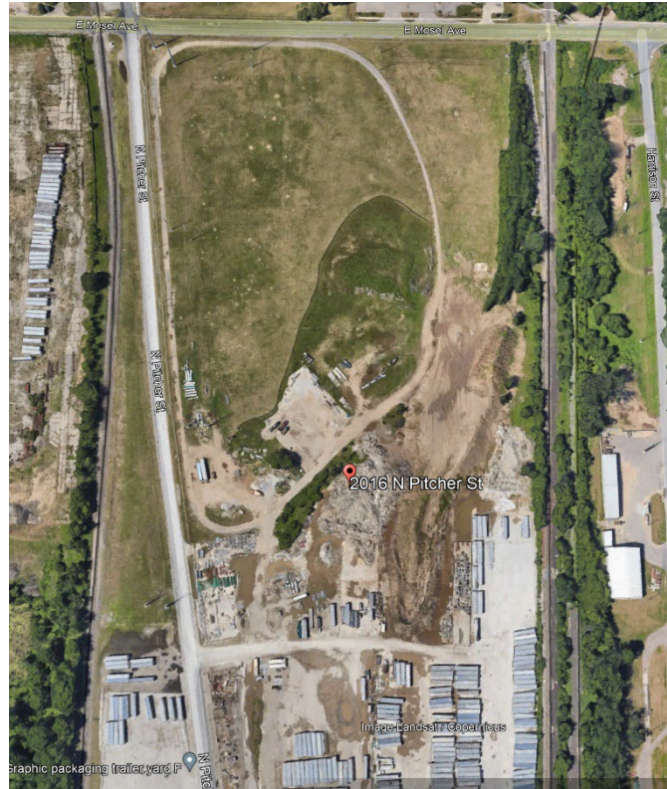
Section 26.05.B.4.a, of the Zoning Ordinance provides criteria for the review of variance requests by the Zoning Board of Appeals. The following are those criteria and how they relate to this request:

- a. *The ZBA may grant a requested "non-use" variance only upon a finding that practical difficulties exist and that the need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district. In determining whether practical difficulties exist, the ZBA shall consider the following factors:*
  - (1) *Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.*

The applicant states the following: "Yes, strict compliance with restrictions governing setbacks renders conformity unnecessarily burdensome as it prevents Graphic Packaging International from providing sufficient parking to accommodate current demand, which includes gradually increasing production from the new K2 facility. Furthermore, the larger greenspace due to the higher setback would contribute to the spread of contaminants to the adjacent properties and the groundwater. Conformity to the maximum roadside berm height of 3' also prevents an opportunity to provide better screening and limit visual impact from the Roadway."

We note that the site could conform with setback requirements for the I-2 District as it pertains to outdoor storage: the site is primarily vacant and undeveloped – there does not appear to be any physical land characteristics that would prevent compliance with the ordinance.

While the applicant indicates that a larger greenspace would contribute to the spread of contaminants, no supporting documents have been provided to justify this claim. Additional





greenspace would allow for natural storm water management and reduce the potential of runoff from hard surfaces, such as concrete and asphalt.

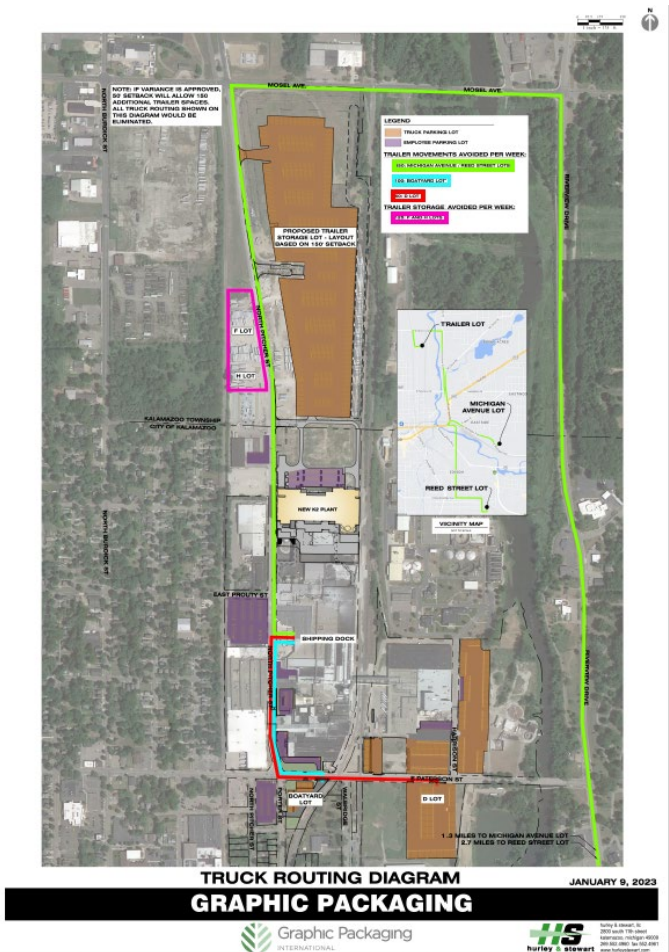
Further, the applicant is seeking a variance to construct landscaping berms that are six (6) feet in height, where ordinance permits a maximum of three (3) feet in height. The applicant proposes to construct the berms in accordance with the landscaping provisions of the Township ordinance, which requires berms along public road frontages. The applicant indicates that a berm height of six (6) feet would better screen the outdoor storage of the semi-trailers than a berm of three (3) feet.

While the applicant can meet ordinance requirements as stipulated within the Zoning Ordinance relative to berm height, the variance is being sought to exceed that of which is permitted. Township staff does not find the ordinance requirements of three (3) feet to be burdensome but acknowledges that the applicant seeks to further screen the subject site by use of landscaping. We find that no practical difficulty exists as it relates to this request.

- (2) *The variance will do substantial justice to the applicant, as well as to other property owners.*

It is not anticipated that granting the variance request will greatly impact neighboring properties. The potential impact of the proposed setback reduction from 150 feet to 50 feet is semi-mitigated by the applicants request to increase the maximum permitted height of landscaping berms from three (3) feet to six (6) feet. Further, by reduction of the setback to 50 feet, the applicant indicates that additional onsite semi-trailer storage would be achievable, which will ultimately reduce the impact on adjacent property owners as it relates to vehicular traffic, as shown in the accompanying diagram to the right, provided by Hurley & Stewart.

Further, as previously referenced, the applicant indicates that a reduced setback would permit an increase in trailer storage and warehousing on site, which would reduce the impact to adjacent property owners that are impacted by existing truck storage lots located within the City of Kalamazoo and Kalamazoo Township. The Board could consider reduced truck traffic as justice to adjacent property owners.



- (3) *A lesser variance than requested will not give substantial relief to the applicant and/or be*





*consistent with justice to other property owners.*

The applicant indicates that a lesser variance would not give substantial relief. Township staff note that a lesser variance, pertaining to the setback request, would still permit an increase in trailer storage/warehousing on the subject site above what current setbacks appear to limit. We find that a lesser variance relating to setbacks would still provide relief to the applicant.

Regarding the requested berm height of six (6) feet where a maximum of three (3) feet is permitted, we find that a lesser variance would not give substantial relief to the applicant. As referenced initially, the applicant is seeking to develop this site to store an estimated minimum of 750 semi-trailers for use as warehousing for onsite operations. An increase in berm height would aid in vegetational screening of the proposed use.

- (4) The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant's predecessors. (For example, a variance needed for a proposed lot split would, by definition, be self-created, so such a variance typically would not be granted.)*

The applicant is seeking a setback variance to permit the outdoor storage of semi-trailers for warehousing operations 50 feet from the property line, where a minimum of 150 feet is required per the Township Zoning Ordinance. We find that the need for the variance is self-created due to the applicant seeking to develop the property that is not in compliance with ordinance standards. Staff does note that, if the applicant were to construct a physical structure/building, the required setback for the I-2, General Industrial District is 50 feet along a front yard.

Further, the applicant is seeking a height variance to permit the erection of landscaping berms that are six (6) feet where a maximum of three (3) feet is permitted by the Township Zoning Ordinance. We find that this request is self-created. The applicant could construct landscaping berms that meet ordinance requirements. However, it is noted that the applicant seeks to screen the semi-trailer storage by use of natural vegetation. Further, due to the height of semi-trailers at an estimated 13.5', a three (3) foot berm may have a negligible impact on natural screening, while a six (6) foot tall landscaping berm would offer additional screening.

The subject site is surrounded by other industrial uses, with the Township's Master Plan's Future Land Use classifying this area as Industrial. Therefore, while both of these requests are self-created, any apparent impact on adjacent properties, should the variances be approved, appear to be minimal.

- b. In all variance proceedings, it shall be the responsibility of the applicant to provide information, plans, testimony and/or evidence from which the ZBA may make the required findings. Administrative officials and other persons may, but shall not be required to, provide information, testimony and/or evidence on a variance request.*

Application information, plans, fees, and testimony was provided by the applicant to the administration for review.

Conditions

*The ZBA may impose reasonable conditions in connection with an affirmative decision on an appeal, interpretation or variance request.*



We find that additional/reasonable conditions in connection with the variance request are not applicable at this time. Should the Zoning Board find, after a public hearing is held, additional conditions may be warranted, those can be deliberated during Board discussion.

### **STAFF FINDINGS**

McKenna offers the following for consideration by the Zoning Board:

1. The need for the variances are self-created.
2. A building/structure located in the I-2 District has a front yard setback of 50 feet. The applicant seeks to apply this same standard to the site development of 2016 N. Pitcher Street for the use of semi-trailer storage as warehousing.
3. The proposed variances are not anticipated to be detrimental to adjacent property owners and uses, nor is it anticipated to detract from the area.
4. The variances, if approved by the Zoning Board of Appeals, should be conditioned on the applicant receiving site plan approval from the Kalamazoo Township Planning Commission.
5. There is no precedent for reduced setbacks being granted in the immediate vicinity of the subject site.

Please feel free to reach Danielle Bouchard, AICP, Senior Planner, at [DBouchard@mcka.com](mailto:DBouchard@mcka.com) or Kyle Mucha, AICP, Senior Planner at [KMucha@mcka.com](mailto:KMucha@mcka.com) you have any questions about this variance request or review.

Respectfully,

**McKenna**

Danielle Bouchard, AICP  
Senior Planner

Kyle Mucha, AICP  
Senior Planner

APPLICATION FOR VARIANCE, INTERPRETATION OR APPEAL FORM

Todd Hurley  
(applicant --person filing the appeal)

1500 N. Pitcher St.  
(address)

Kalamazoo, MI 49007  
(city, state, zip code)  
( 269 ) 552-4960  
( telephone, home and business)

OFFICE USE ONLY

Case number \_\_\_\_\_  
Date Rec'd \_\_\_\_\_  
Fee Rec'd \_\_\_\_\_  
Receipt # \_\_\_\_\_  
Hearing date \_\_\_\_\_

Action: \_\_\_\_\_  
Date: \_\_\_\_\_  
Expiration Date: \_\_\_\_\_

Applicant's standing (interest) in the appeal  
(check one):

- Property owner (attach inspection report sheets)
- Adjacent property owner
- Other affected individual. Explain: \_\_\_\_\_
- Other. Explain: Authorized Agent for Graphic Packaging International

PROPERTY OWNER'S (OF LAND SUBJECT TO APPEAL) NAME AND ADDRESS  
(if not the applicant)

Graphic Packaging International  
1500 N Pitcher St  
Kalamazoo, MI 49007

Phone ( 269 ) 383 - 5000

ADDRESS OF LAND SUBJECT TO APPEAL (if known) 2016 N. Pitcher Street

(If new construction, an address will not be known yet. An address is obtained after a zoning permit is issued.)

PARCEL SUBJECT TO APPEAL SIZE 52.68 Acres  
PROPERTY DESCRIPTION FOR LAND SUBJECT TO APPEAL (See Attached)

PARCEL DATA PROCESS (tax) NUMBER FOR LAND SUBJECT TO APPEAL  
06 - 10 - 205 - 010

ZONING DISTRICT OF PROPERTY SUBJECT TO APPEAL (see zoning ordinance)  
I-2 General Industrial

ACTION REQUESTED: (check one)

- To interpret a particular section of the ordinance, as it is felt the Zoning Administrator/Planning Commission is not using the proper interpretation:  
The Section is: \_\_\_\_\_
- To interpret the zoning map, as it is felt the Zoning Administrator/Planning Commission is not reading the map properly. Describe the portion of the zoning map in question (attach detail maps if applicable): \_\_\_\_\_
- To grant a variance to certain requirements of the zoning ordinance, (parking, setbacks, lot size, height, floor area, sign regulations, location of accessory buildings, maximum amount of lot coverage, etc.). Specify the section and specific regulations a variance is being sought from: Section 20.03.A.3 and Section 5.03.C.3
- To overturn an action of the zoning administrator. The zoning administrator erred (did not issue a permit, issued a permit, enforcement): \_\_\_\_\_

**RULING SOUGHT:**

What is the sought ruling by the Kalamazoo Township Zoning Board of Appeals? \_\_\_\_\_

-Berm Variance - Allow for 6' berm (ordinance requires 3' max) along Pitcher St for screening

-Setback Variance - Allow for 50' setback (ordinance requires 150') for outside storage

(attach sheets if necessary)

(  attached)

**STATEMENT OF JUSTIFICATION FOR REQUESTED ACTION**

State specifically the reason for this demand for appeal request: \_\_\_\_\_

(attach sheets if necessary)

(  attached)

**ATTACH THREE COPIES OF A SITE PLAN PLUS ONE ELECTRONIC COPY**, as specified in Section 26.05 (C) 2.

(  attached)

Attach a copy of the initial application concerning this issue and the zoning administrator's (or planning commission's) written ruling on this issue.

(  attached)

**VARIANCE QUESTIONS:**

If you are seeking a variance, on attached sheets, provide answers to the following questions. Please number the answers the same as they are numbered here. Please be specific, and explain your answers. (If the answer to any of the questions numbered 1-5 is "no," a variance may not be granted, Sec. 26.05 (B) 4.a. (1 through 4

(  attached)

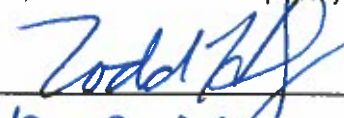
1. Does strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters, unreasonably prevent the owner from using the property for a permitted purpose or does the ordinance render conformity unnecessarily burdensome?
2. Would a variance do substantial justice to the applicant, as well as adjacent property owners?
3. Would a lesser variance not give substantial relief to the applicant and/or be consistent with justice to other property owners?
4. Is the problem and resulting need for the variance not self-created by the applicant and/or the applicant's predecessors?

VARIANCE, MAP INTERPRETATION INFORMATION:

If you are seeking a variance, or a map interpretation, the following must be provided:

1. Attach or list all deed restrictions for the property in question.  
(  attached)
2. Attach a list of names and address of all other persons, firms, or corporations having a legal or equitable interest in the property in question.  
(  attached)
3. This area is (check one):     unplatted         platted         will be platted.  
If platted, name of plat: \_\_\_\_\_
4. What is the present use of the property? Vacant/Construction Parking

AFFIDAVIT: I agree the statements made above are true, and if found not to be true, any Zoning Board of Appeals ruling that may be issued may be void. Further I agree, any Zoning Board of Appeals ruling and subsequent permit that may be issued is with the understanding all applicable sections of the Kalamazoo Township Zoning Ordinance will be complied with. Also, I agree to notify the zoning administrator for the Kalamazoo Township for inspection before the start of construction and when locations of proposed uses are marked on the ground. Further, I agree to give permission for officials of Kalamazoo Township, Kalamazoo Area Building Authority, Kalamazoo County and the State of Michigan to enter the property subject to this permit application for purposes of inspection. Also I understand any zoning action by the Zoning Board of Appeals conveys only land use rights, and does not include any representation or conveyance of rights in any other statute, building code, deed restriction or other property rights.

Signed:   
Date: 12-9-20

When completed send two copies to:

Planner / Zoning Administrator  
Kalamazoo Township  
1720 Riverview Drive  
Kalamazoo, MI 49004-1099

planner@ktwp.org



January 9, 2023

To: Planner/Zoning Administrator  
Kalamazoo Township  
1720 Riverview Drive  
Kalamazoo, MI 49009-1099

From: Todd Hurley, P.E.  
2800 South 11<sup>th</sup> Street  
Kalamazoo, MI 49009

Re: Graphic Packaging International Variance Application

To whom it may concern,

This letter is intended to supplement Graphic Packaging International's application for variance with respect to 2016 North Pitcher Street (Parcel Number 06-10-205-010). Please refer to the information listed below pertaining to the submitted application.

**Property Description**

1014500 3906 10 205 010 G 10-5 SEC 10-2-11 BEG AT N1/4 POST TH S 89 DEG 08 MIN E ALG N LI SD SEC 991.57 FT TO W LI GTWRR TH S 1 DEG 22 MIN W THEREON 347.82 FT TH W PAR TO SD N LI 28.3 FT TH S 1 DEG 22 MIN W 336.27 FT TH E PAR TO SD N LI 103.3 FT TO W LI NYCRR TH S 1 DEG 22 MIN W THEREON 1954 FT TO E&W1/4 LI SD SEC TH N 88 DEG 51 MIN W THEREON 687.06 FT TO CTR LI OF PITCHER ST TH N 1 DEG W THEREON 335 FT TO AN ANG PT TH N 10 DEG 13 MIN W 1324.06 FT TO AN ANG PT TH N 6 DEG 53 MIN W 1009.3 FT TO N LI SD SEC TH E 45.13 FT TO BEG\* 50.66A

**Ruling Sought**

The purpose of this variance application is to reduce the setback outlined in section 20.03.A.3A of the ordinance from 150' to 50' and to increase the maximum roadside berm height outlined in section 5.03.C.3 from 3' to 6' for the reasons described below.

**Statement of Justification For Requested Action**

*Reason 1 – Environmental due care and stormwater improvements.*

The previous industrial land use of the proposed site has left most of the property with contaminated soil. The environmental due care plan for this site states that existing paved surfaces are preventing subsurface contamination. It is our intention to cap the majority of the site with asphalt pavement to prevent stormwater from infiltrating and spreading the contamination into the groundwater and surrounding properties. Existing stormwater runoff on



the site is neither detained nor treated. In our proposed design, stormwater will be collected in a piped network and treated in a lined basin that slow releases to the county drain along the south property line of this parcel. Both the asphalt cap and the lined basin will effectively reduce the spread of the contamination to the adjacent properties and the groundwater. There is a large 54" county drain to tie into south of the site, along with a large box culvert at the southeast corner of the site that would provide an overflow relief in severe storm events. We are working closely with the Drain Commissioner on this design to effectively contain and treat the water before it makes its way to the Kalamazoo River. Leaving 150' of greenspace along Pitcher would allow a large area to infiltrate and migrate contaminates into the groundwater and adjacent properties.

*Reason 2 - Consolidation of trailer parking.*

Currently Graphic Packaging has trailers stored throughout the surrounding area including many places in Kalamazoo Township and the City of Kalamazoo. This design consolidates their operation considerably and will greatly reduce the heavy truck traffic on the surrounding road system. Reducing the travel times of the trailer storage operation will also result in a large reduction on emissions. We are working closely with the Road Commission of Kalamazoo County and performing a traffic study to make sure that this proposed use will function properly. If the 150' setback is required, then the capacity of the parking lot will be reduced to the point that it will not cover their projected needs. We have attached a truck routing diagram that identifies the impact of having less parking spaces due to the increased setback. In this scenario, over 500 additional trips per week would be required, thereby increasing emissions and having a negative effect on public safety.

*Reason 3 - Visibility concerns will be addressed.*

The intent of the 150' setback is to reduce the impact to adjacent properties. The entire surrounding area is zoned industrial with like uses and minimal setbacks that are less than what we are proposing. The entire frontage along Pitcher St and Mosel Ave will be screened with substantial landscaping and an opaque fence. Pending a fill permit, Mosel Ave will have further screening via a 14' berm located south of the Consumers power lines over 100' off the road. We are also requesting a 6' berm height along Pitcher St south of the main drive as part of this variance application. This will be constructed with consideration for stability, proper side slopes, and adequate flat area at the top. We feel this will provide a better screen than the ordinance maximum of 3'. As stated in the attached denial letter from Consumers, we cannot construct berms north of the main drive because fill is not allowed within 20' of their lines. All berms, fencing, and landscaping will be detailed during the site plan review process in compliance with the Township ordinance. It is the desire of Graphic Packing for the parked trailers to be minimally visible from Pitcher and Mosel. This will also help with the security of the parcel.

*Reason 4 - Utilities adjacent to Pitcher.*

There are high voltage electric towers along the west side of this property and a high-pressure gas main. The proposed design complies with their easements and allows for the power and gas companies to access their infrastructure. The aforementioned letter from Consumers states that asphalt paving within the power line easement is compliant.



*Summary* - Graphic Packaging is committed to constructing this project in accordance with environmental best practices which requires addressing the contaminated soil within this parcel and treating the stormwater. They also want to provide safe access to the large utilities that run along the west side of this parcel along with a secure perimeter that is designed to minimize the visual impact of the parked trailers which meets the intent of the setback requirement in section 20.03.A.3A. Reducing the setback will also allow the consolidation of their trailer storage operation. This would greatly reduce truck traffic by over 500 trips per week and eliminate the resulting emissions. We respectfully request reduction of the setback to 50' and increase of allowable roadside berm height to 6' so that Graphic Packaging can move forward with this project addressing the four major concerns described herein.

### **Variance Questions:**

1. Does strict compliance with restrictions governing area, setback, frontage, height, bulk, density, or other non-use matters, unreasonably prevent the owner from using the property for a permitted purpose or does the ordinance render conformity unnecessarily burdensome?

*Response: Yes, strict compliance with restrictions governing setbacks renders conformity unnecessarily burdensome as it prevents Graphic Packaging International from providing sufficient parking to accommodate current demand, which includes gradually increasing production from the new K2 facility. Furthermore, the larger greenspace due to the higher setback would contribute to the spread of contaminants to the adjacent properties and the groundwater. Conformity to the maximum roadside berm height of 3' also prevents an opportunity to provide better screening and limit visual impact from the roadway.*

2. Would a variance do substantial justice to the applicant, as well as adjacent property owners?

*Response: Yes, a variance would do substantial justice to the applicant and adjacent property owners. Allowing this variance would allow more trailers to be stored on site, reducing the number that must be stored in satellite lots that then have to be brought in for fulfillment. Allowing this variance keeps those trailers on site, preventing them from driving past neighboring properties as often as current conditions. Furthermore, this variance would positively impact surrounding properties by reducing pollution in many ways as mentioned within this application. This variance will also provide better screening for adjacent property owners.*

3. Would a lesser variance not give substantial relief to the applicant and/or be consistent with justice to other property owners?

*Response: A lesser variance would not give substantial relief to the applicant for the same reasons mentioned in 2.*





4. Is the problem and resulting need for the variance not self-created by the applicant and/or the applicant's predecessors?

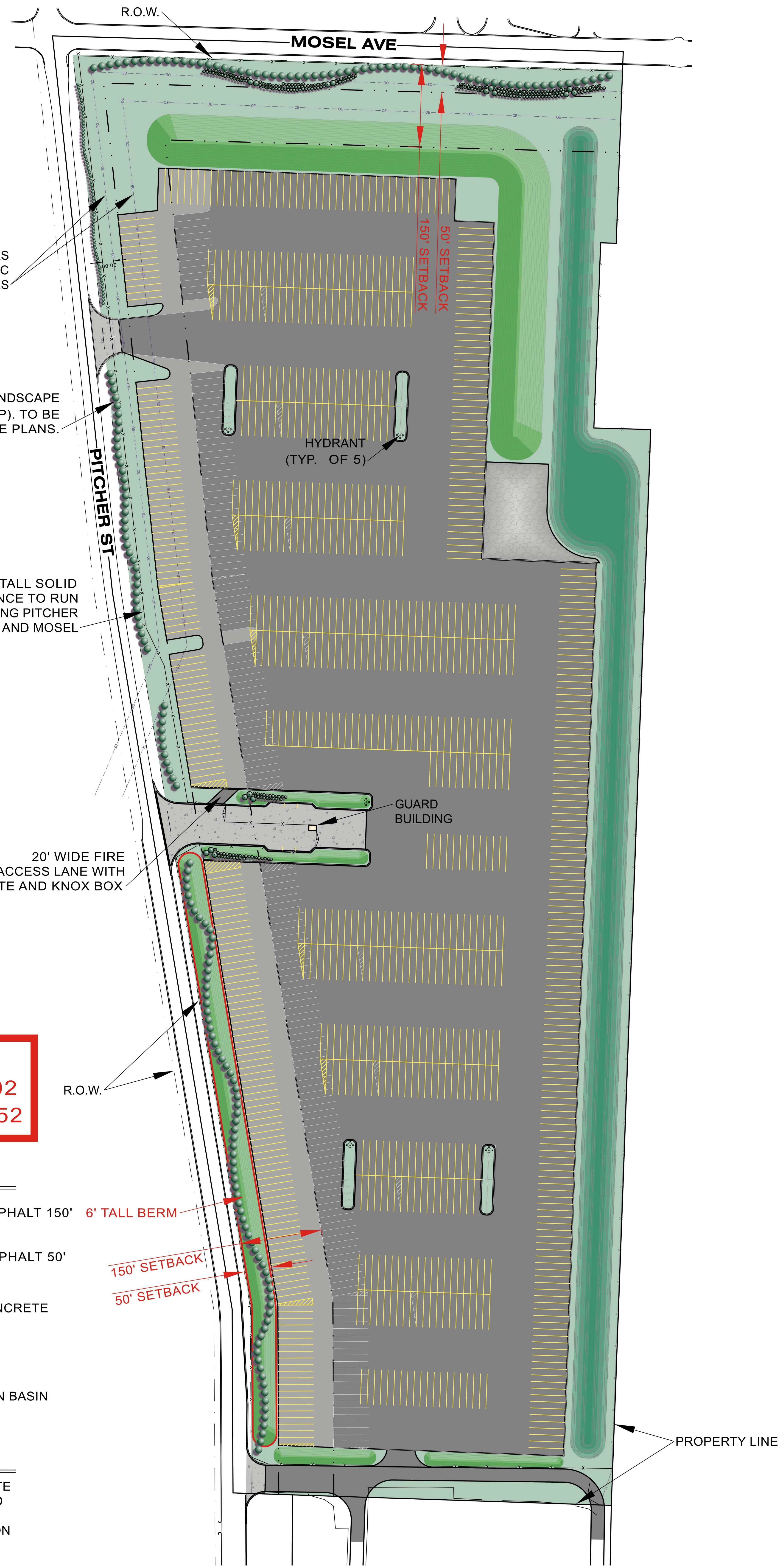
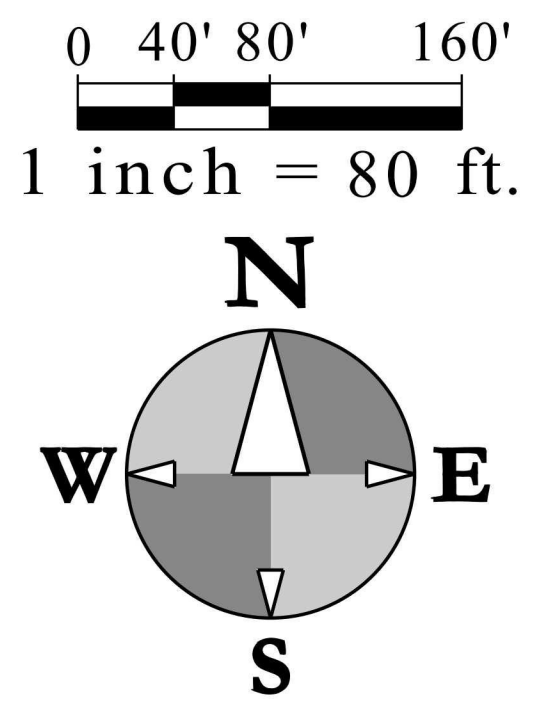
Response: This existing condition is not self-created by Graphic Packaging. This property was contaminated by the previous landowners and Graphic Packaging has inherited the responsibility for cleaning up the property and developing it within the requirements of the Environmental Due Care plan. We feel this design fulfills their responsibility. Envirologic monitors this process to ensure compliance with the plan.

Should any additional information be required, please contact our office. Thank you for your time and consideration with this matter.

Sincerely,

Todd Hurley, P.E.

A handwritten signature in blue ink that reads 'Todd Hurley'.



EXISTING CONSUMERS OVERHEAD ELECTRIC LINES

CONCEPTUAL LANDSCAPE SCREENING (TYP). TO BE DETAILED IN SITE PLANS.

6' TALL SOLID FENCE TO RUN ALONG PITCHER AND MOSEL

20' WIDE FIRE ACCESS LANE WITH GATE AND KNOX BOX

GUARD BUILDING

HYDRANT (TYP. OF 5)

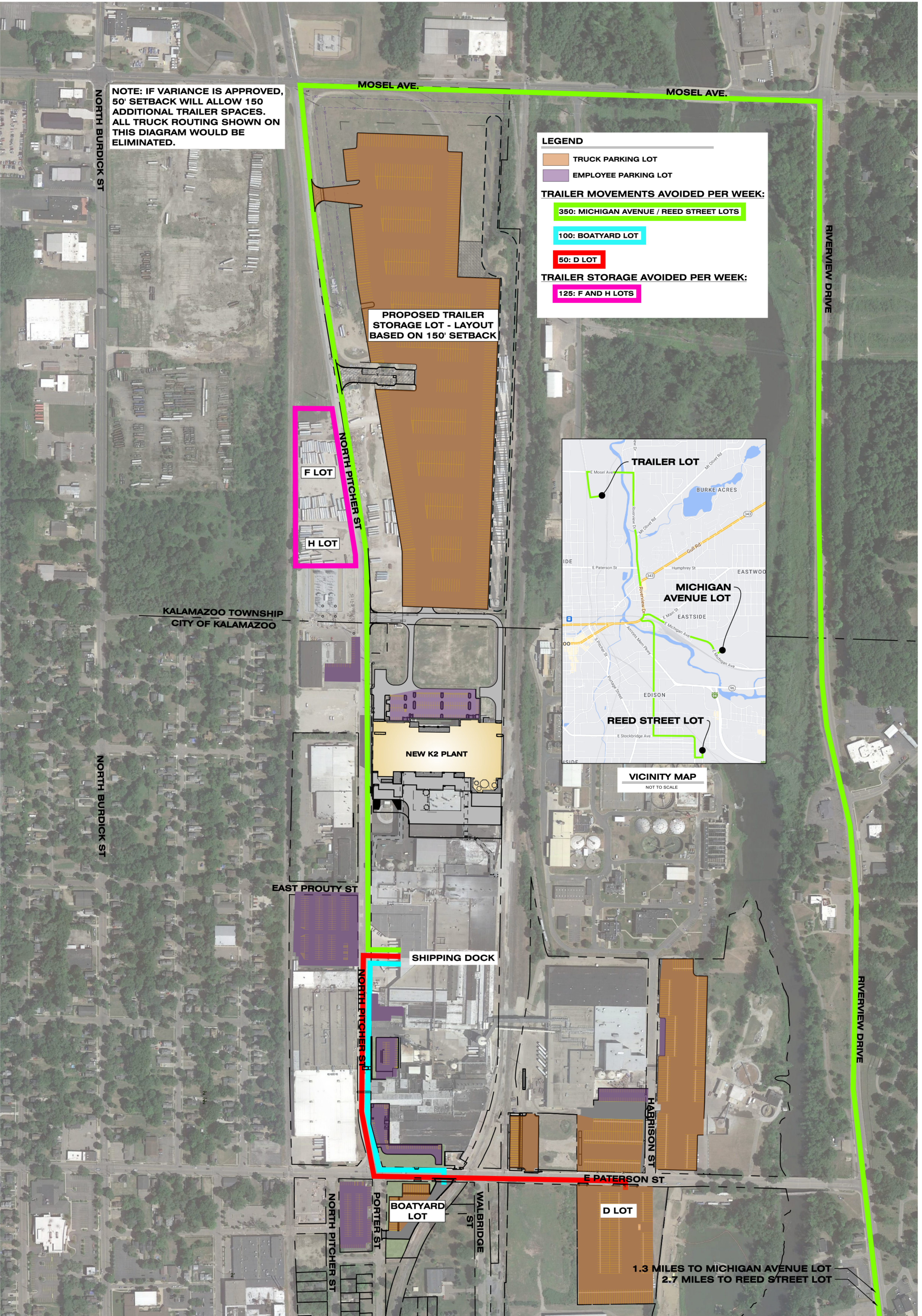
**TRAILER SPACES:**  
 50' SETBACK = 902  
 150' SETBACK = 752

**LEGEND**

- HEAVY-DUTY ASPHALT 150' SETBACK
- HEAVY-DUTY ASPHALT 50' SETBACK
- HEAVY-DUTY CONCRETE
- BERMS
- LINED DETENTION BASIN

**NOTES**

1. EXISTING CONCRETE ON SITE TO BE CRUSHED AND USED FOR PARKING LOT BASE.
2. PARKING LOT CONSTRUCTION WILL BE PHASED.



NOTE: IF VARIANCE IS APPROVED, 50' SETBACK WILL ALLOW 150 ADDITIONAL TRAILER SPACES. ALL TRUCK ROUTING SHOWN ON THIS DIAGRAM WOULD BE ELIMINATED.

**LEGEND**

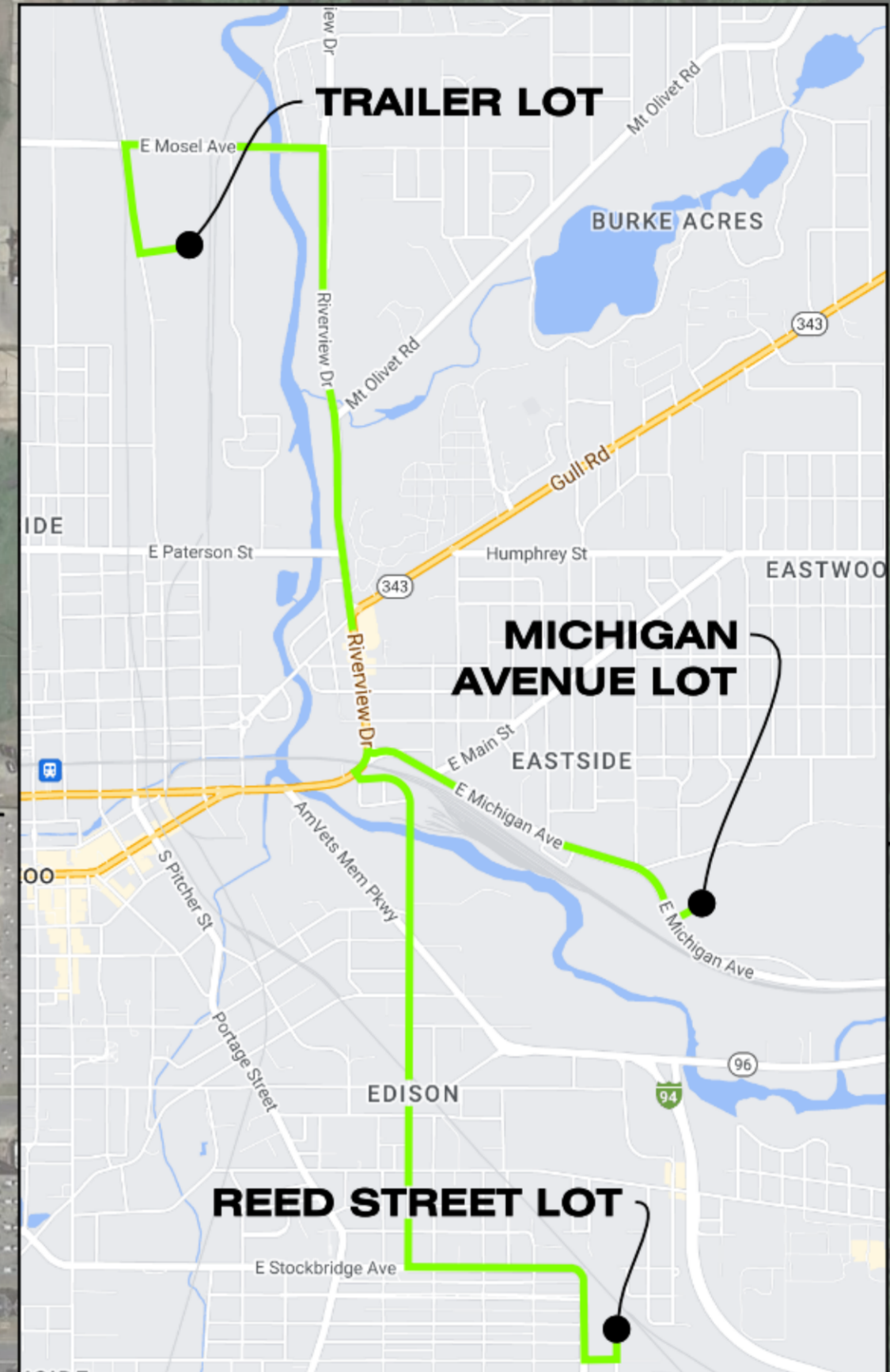
- TRUCK PARKING LOT
- EMPLOYEE PARKING LOT

**TRAILER MOVEMENTS AVOIDED PER WEEK:**

- 350: MICHIGAN AVENUE / REED STREET LOTS
- 100: BOATYARD LOT
- 50: D LOT

**TRAILER STORAGE AVOIDED PER WEEK:**

- 125: F AND H LOTS



**TRUCK ROUTING DIAGRAM**

JANUARY 9, 2023

**GRAPHIC PACKAGING**

December 5, 2022

Graphic Packaging International  
1500 N. Pitcher Street  
Kalamazoo, MI 49007

Re: #2655 Kalamazoo/Kalamazoo/Graphic Packaging International

To Whom It May Concern,

Thank you for contacting Consumers Energy Company (“Consumers”) regarding the above referenced proposed project in Kalamazoo County, lying within the boundaries of Consumers’ easement recorded in Instrument# 2022-034451, Kalamazoo County records, which easement encumbers the following described land (“Easement Area”):

See attached Exhibit A

Consumers has reviewed the request received by Graphic Packaging International on October 20, 2022 and has determined that your proposed improvements will interfere with Consumers’ easement rights on the above referenced property.

Consumers’ easement on the above referenced property is a property right protected by law and viewed by the law to be a right superior to the underlying property owner’s rights. Consumers protects its easement rights in order to ensure safe and reliable service to its customers.

Pavement and curbing within the easement area will be allowed conditionally, final plans must be reviewed, as long as grading slope(s) maintain 1:4 ratio. No berms, fences or other manmade building, structures, installations can be installed within the 20’ no-build area as stated in the recorded Easement referenced above.

Best regards,

Aisling Warren  
Consumers Energy Real Estate Analyst

EXHIBIT A

Land situated in the Township of Kalamazoo, County of Kalamazoo, State of Michigan:

Beginning at the North 1/4 post of Section 10, Town 2 South, Range 11 West, City and Township of Kalamazoo, Kalamazoo County, Michigan; thence South 89°08' East along the North line of said Section 991.57 feet to the West line of the Grand Trunk and Western Railroad; thence South 01°22' West 347.82 feet; thence West parallel to the said North line 28.30 feet; thence South 01°22' West 336.27 feet; thence East parallel to the said North line 103.30 feet to the West line of the New York Central Railroad; thence South 01°22' West thereon 1954.00 feet to the East and West 1/4 line of said Section; thence continuing Southerly along said Railroad Right of Way (also being known as Penn Central Railroad, formerly L.S. & M.S. Railroad) 901.24 feet to a point 100.00 feet Northerly of the centerline of Lucille Street(Vacated); thence Westerly parallel to and 100.00 feet Northerly of said Centerline 467.12 feet to a point 173.00 feet Easterly of the Easterly line of Pitcher Street; thence Northerly parallel to the Easterly line of said street 40.00 feet; thence Westerly parallel to the Center line of said vacated street 173.00 feet to the Easterly line of Pitcher Street; thence Northerly thereon 717.73 feet to a point 145.00 feet Southerly of the East and West 1/4 line of Section 10; thence Easterly parallel to said 1/4 line 75.00 feet; thence Northerly parallel to the East line of Pitcher Street 145.00 feet to said East and West 1/4 line; thence North 88°51' West thereon 108.00 feet to the centerline of Pitcher Street; thence North 01°00' West thereon 335.00 feet to an Angle point; thence North 10°13' West 567.01 feet; thence North 88°51' West 210.62 feet to the North and South 1/4 line of said Section; thence North thereon 1369.35 feet to the centerline of said Pitcher Street; thence North 06°53' West along said centerline 377.14 feet to the North line of said Section; thence East 45.13 feet to the Place of Beginning. Except that part lying West of the centerline of North Pitcher Street.

Parcel ID: 06-10-205-010

Also known as 2016 N. Pitcher St., Kalamazoo, MI 49007



**DUE CARE PLAN**

**DOCUMENTING COMPLIANCE WITH**

**SECTION 7A OF ACT 451**

**FOR**

**FORMER CHECKER MOTORS SITE**

**LOCATED AT**

**1810 NORTH PITCHER STREET**

**CITY OF KALAMAZOO, MICHIGAN**

**AND**

**2016 NORTH PITCHER STREET**

**KALAMAZOO TOWNSHIP, MICHIGAN**

**PREPARED FOR:**

**GRAPHIC PACKAGING INTERNATIONAL, INC.**

**KALAMAZOO, MICHIGAN**

**OCTOBER 2015**

**PROJECT NO. G140513B15**



# TABLE OF CONTENTS

- 1.0 INTRODUCTION..... 1
- 2.0 HAZARDOUS SUBSTANCE INFORMATION ..... 3
  - 2.1 Known Contamination ..... 3
  - 2.2 Exposure Pathways ..... 5
  - 2.3 Exposure Controls..... 5
    - 2.3.1 Drinking Water ..... 5
    - 2.3.2 GSIPC ..... 5
    - 2.3.3 Volatilization to Indoor Air ..... 6
    - 2.3.4 Direct Contact ..... 6
- 3.0 CHARACTERISTICS OF PROPERTY USE..... 7
  - 3.1 Current and Proposed Property Use..... 7
  - 3.2 Hazardous Substances Used, Stored, or Handled ..... 7
  - 3.3 Operational and Maintenance Procedures ..... 7
- 4.0 NOTIFICATIONS ..... 8
  - 4.1 Offsite Migration Notification ..... 8
  - 4.2 Abandoned Container Notification ..... 8
  - 4.3 Easement Holder Notification ..... 8
  - 4.4 Mitigation of Fire and Explosion Hazards ..... 8
- 5.0 COMPLIANCE WITH SECTION 7A SUMMARY ..... 9
  - 5.1 Exacerbation ..... 9
  - 5.2 Due Care ..... 10
  - 5.3 Reasonable Precaution..... 10
  - 5.4 Provide Reasonable Cooperation, Assistance, and Access..... 11
  - 5.5 Comply With And Not Impede Effectiveness of Land And Resource Use Restrictions.... 11
  - 5.6 Due Care Documentation ..... 11

## LIST OF FIGURES

- Figure 1 Location Map
- Figure 2 Site Plan
- Figure 3 Soil Analytical Results Residential Exposure Criteria Exceedances
- Figure 4 Surface Soil Analytical Results Residential Exposure Criteria Exceedances
- Figure 5 Groundwater Analytical Results Residential Exposure Criteria Exceedances
- Figure 6 Vapor Points Residential Exposure Criteria Exceedances

## LIST OF APPENDICES

- Appendix 1 Section 20107a “Due Care” Administrative Rules

# TABLE OF CONTENTS

## LIST OF ABBREVIATIONS/ACRONYMS

AST	aboveground storage tank
BEA	Baseline Environmental Assessment
bgs	below ground surface
Cr+6	hexavalent chromium
DCC	Direct Contact Criteria
DCE	dichloroethene
DWC	Drinking Water Criteria
DWPC	Drinking Water Protection Criteria
ESA	Environmental Site Assessment
FTCH	Fishbeck, Thompson, Carr & Huber, Inc.
GPI	Graphic Packaging International, Inc.
GRCC	Generic Residential Cleanup Criteria
GSIC	Groundwater Surface Water Interface Criteria
GSIPC	Groundwater Surface Water Interface Protection Criteria
GVIAIC	Groundwater Volatilization to Indoor Air Inhalation Criteria
LNAPL	light non-aqueous phase liquids
MDEQ	Michigan Department of Environmental Quality
MIOSHA	Michigan Occupational Safety and Health Administration
NREPA	Natural Resources and Environmental Protection Act
PA	Public Act
PCE	tetrachloroethene
PPE	personal protection equipment
REC	recognized environmental condition
RRD	Remediation and Redevelopment Division of the MDEQ
SMP	Soil Management Plan
TCE	trichloroethene
TSDF	Transportation, Storage, or Disposal Facility
UST	underground storage tank
VEC	vapor encroachment condition



## 1.0 INTRODUCTION

This Section 7a Compliance Analysis Due Care Plan has been prepared on behalf of Graphic Packaging International (GPI) for the purchase of two adjoining parcels of land: 1810 North Pitcher Street, City of Kalamazoo, Michigan; and 2016 North Pitcher Street, Kalamazoo Township, Michigan (subject property). A Location Map for the subject property is provided as Figure 1, and a Site Plan is provided as Figure 2.

This Due Care Plan has been developed because the subject property was determined to be a *facility*, as defined in Part 201 of PA 451, 1994, as amended. Information used in the development of this Due Care Plan includes the following reports and investigations constituting all appropriate inquiry into past and current environmental conditions:

- FTCH, *Phase I Environmental Site Assessment for Former Checker Motors Site, 1810 North Pitcher Street, City of Kalamazoo, Michigan and 2016 North Pitcher Street, Kalamazoo Township, Michigan, dated June 2015.*
- FTCH, *Phase II Environmental Site Assessment for Former Checker Motors Site, 1810 North Pitcher Street, City of Kalamazoo, Michigan, and 2016 North Pitcher Street, Kalamazoo Township, Michigan, dated July 2015.*
- FTCH, *Baseline Environmental Site Assessment for Former Checker Motors Site, 1810 North Pitcher Street, City of Kalamazoo, Michigan, and 2016 North Pitcher Street, Kalamazoo Township, Michigan, dated August 2015.*

Section 7a of Part 201 of Michigan's NREPA, 1994 PA 451, as amended, requires owners and operators to take due care measures to ensure that known existing contamination on a property does not cause unacceptable risks and is not exacerbated. An owner or operator of a *facility*, defined in Part 201 as property with contamination concentrations above Michigan's cleanup criteria for residential property, shall do all of the following with respect to contamination at the *facility*:

- Prevent exacerbation of the existing contamination.
- Prevent unacceptable human exposure and mitigate fire and explosion hazards to allow for the intended use of the *facility* in a manner that protects the public health and safety.
- Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party.
- Provide notifications to the MDEQ and others, if warranted.
- Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct response activities at the property.

- Comply with any land use or resource use restrictions established or relied on in connection with the response activities.
- Not impede the effectiveness or integrity of any land use or resource use restriction.

GPI intends to remove the existing buildings and debris piles and will evaluate possible future uses for the subject property.

The subject property consists of approximately 63.78 acres located on the east side of North Pitcher Street in a heavy industrial neighborhood. The majority of the structures on the subject property have been demolished; however, some of the structures are still partially standing and debris piles from previous demolition activities are scattered throughout the property.

Historically, the subject property was used by Checker Motors Corporation (Checker) for the manufacture of automobiles since the 1920s, until automobile manufacturing ceased in 1982. After automobile manufacturing operations ceased, Checker continued to operate manufacturing automotive parts until it went bankrupt in 2009.

In 2010, the subject property was acquired by Jones Trading. Jones Trading presumably did not conduct any operations on the subject property. Jones Trading demolished most of the buildings on the subject property, leaving several piles of demolition debris throughout the subject property.

A Phase I ESA was conducted by FTCH in June 2015. RECs identified in the Phase I ESA were further investigated during Phase II ESA sampling activities that included soil sampling, surficial soil sampling, and shallow aquifer and deep aquifer groundwater sampling, which was conducted in June and July 2015. The subject property was determined to be a *facility*, as defined in Section 20101(1)(s) of Part 201 of the NREPA, 1994 PA 451, as amended, due to the presence of PCE, TCE, benzo(a)pyrene, fluoranthene, phenanthrene, arsenic, chromium, copper, lead, mercury, selenium, xylenes, and zinc in soil; and cis-1,2-DCE, TCE, vinyl chloride, total chromium, Cr+6, iron, lead, nickel, and mercury in groundwater at concentrations exceeding applicable Part 201 GRCC. These criteria are found in R299.5744 and R299.5746 of the Part 201 Rules of the NREPA, as amended.

## 2.0 HAZARDOUS SUBSTANCE INFORMATION

### 2.1 KNOWN CONTAMINATION

FTCH oversaw the completion of 22 soil borings and installation of 22 temporary wells, 48 surface samples (SS-01 through SS-48), and the installation of soil vapor points (VP-01 through VP-25) installed in SS-01 through SS-25, respectively. The drilling activities were completed by Stearns Drilling Company, Dutton, Michigan (Stearns).

Additionally, five soil borings/monitoring wells at three locations (i.e., two nested wells and a single well) were drilled and installed by Stearns to investigate the deeper portion of the subject property's aquifers. The deep aquifer monitoring wells are shown on Figure 5. The deep aquifer monitoring wells were completed in areas along the western portion of the subject property, which was determined to be the hydraulically-upgradient side of the subject property.

#### Soil Results

The soil analytical results indicated that the following contaminants were detected at concentrations exceeding Part 201 GRCC (Figure 3):

- PCE (at SWMU4-SB01)
- TCE (at SWMU8-SB01)
- Arsenic (at AOC3-SB01 and SB03, AOC4-SB01 and SB02, AOC7-SB01, SWMU8-SB01, and SWMU10-SB01)
- Benzo(a)pyrene (at AOC4-SB01 and SB02)
- Total chromium (at AOC3-SB01, AOC4-SB02, and SWMU3-SB01)
- Copper (at AOC4-SB02)
- Fluoranthene (at AOC4-SB01 and SB02)
- Mercury (at AOC4-SB01)
- Phenanthrene (at AOC4-SB01 and SB02)
- Selenium (at AOC3-SB04, AOC7-SB01, SWMU3-SB01 and SB02, and SWMU4-SB01)
- Zinc (at AOC4-SB02)

Surface sample analytical results indicated the following contaminants were detected at concentrations exceeding Part 201 GRCC (Figure 4).

- PCE (at SS-19)
- TCE (at SS-19, SS-30, and SS-32)
- Phenanthrene (at SS-19 and SS-46)
- Total xylenes (at SS-22)
- Arsenic (at several locations, see Figure 4)
- Total chromium (at SS-26)
- Copper (at SS-10 and SS-26)
- Lead (at SS-10)
- Mercury (at SS-21 and SS-48)
- Selenium (at several locations, see Figure 4)
- Zinc (at SS-10 and SS-14)

### **Groundwater Results**

Groundwater sample analytical results indicated the following contaminants were detected at concentrations exceeding Part 201 GRCC (Figure 5).

- Cis-1,2-dichloroethene (at MW-01S)
- Hexavalent chromium (at SWMU3-TW01)
- Total chromium (at SWMU2-TW-04)
- Iron (at MW-01S, MW-01D, MW-02S, MW-02D, MW-03, and Well 5)
- Lead (at AOC3-TW04)
- Mercury (at MW-01S, MW-01D, and Well 5)
- Nickel (at SWMU3-TW-01)
- TCE (at several locations, see Figure 5)
- Vinyl chloride (at MW-01S, MW-02S, MW-02D, MW-03, and SWMU6-TW01)

### **Soil Vapor Results**

Soil vapor analytical results indicated the following contaminants were detected at concentrations exceeding Vapor Intrusion Screening Levels (Figure 5).

- TCE (at VP-20)

## 2.2 EXPOSURE PATHWAYS

Each set of GRCC corresponds to a specific exposure pathway. A complete exposure pathway is generally defined by the following four elements:

- A source of chemical release to the environment;
- An environmental medium for transport of the chemical (e.g., air, groundwater, or soil);
- A point of potential exposure for a receptor; and,
- A route of exposure for the receptor (e.g., ingestion, inhalation, or dermal contact).

An exposure pathway is considered complete or potentially complete, and exposure is considered possible only if all four of these elements are present. A pathway is relevant when exposure can occur, even if exposure controls are or will be relied on to prevent exposure.

## 2.3 EXPOSURE CONTROLS

### 2.3.1 DRINKING WATER

Analytical data demonstrates groundwater at the subject property contains cis-1,2-dichloroethene, TCE, vinyl chloride, iron, and lead at concentrations exceeding the Part 201 DWC. Therefore, the relevant human exposure pathway at the subject property includes ingesting contaminated groundwater.

However, potable water at the subject property is provided by municipal authorities and there are currently no potable water wells on the subject property. Potable water utilized onsite is obtained from the City of Kalamazoo municipal water system. Site groundwater will not be used for any purpose other than groundwater monitoring. Therefore, the drinking water pathway is not complete because there is no direct route of exposure.

### 2.3.2 GSIPC

Analytical data demonstrates that groundwater at the subject property has hexavalent chromium, total chromium, mercury, nickel, and vinyl chloride at concentrations that exceed GSIC. However, while GSIC is applicable for establishing a property as a "facility," this criterion is not used to assess due care obligations with regards to exposure controls. GSIC was established to assess the potential impacts of a contaminant to flora and fauna in surface water bodies.

### 2.3.3 VOLATILIZATION TO INDOOR AIR

Contaminants with the potential to volatilize to indoor air, including PCE, TCE, cis-1,2-dichloroethene, and vinyl chloride were detected in groundwater. The detected concentrations were below Part 201 GVIAIC. However, TCE was detected in soil gas sampling at vapor point VP-20 (Figure 6) at a concentration exceeding the soil screen value for the vapor intrusion pathway (*Indoor Air, Soil, Gas, Groundwater, and Soil Screening Values For the Vapor Intrusion Pathway, Nonresidential Land Use, MDEQ RRD, May 23, 2013*). Therefore, this exposure pathway is potentially complete.

### 2.3.4 DIRECT CONTACT

Arsenic, benzo(a)pyrene, and lead were identified on the subject property exceeding their respective DCC; therefore, this exposure pathway is relevant. Utility workers and construction contractors excavating subsurface soils will be informed by GPI of the potential presence of contaminants on the subject property, and the PPE measures they might take to protect against unacceptable exposure will be identified.

### **3.0 CHARACTERISTICS OF PROPERTY USE**

#### **3.1 CURRENT AND PROPOSED PROPERTY USE**

GPI intends to remove the existing buildings and debris piles and will evaluate possible future uses for the subject property.

#### **3.2 HAZARDOUS SUBSTANCES USED, STORED, OR HANDLED**

At this time, it is not known if future operations will involve the use or storage of significant amounts of hazardous substances or petroleum products.

#### **3.3 OPERATIONAL AND MAINTENANCE PROCEDURES**

Operational and maintenance procedures include routine inspection and repair of landscaped and paved surfaces, and proper maintenance and operation of the stormwater control system, in accordance with Best Management Practices.

Operational and maintenance procedures during any potential future development of the subject property will include the use of erosion control, proper soil management, and proper management of groundwater during dewatering activities.

## **4.0 NOTIFICATIONS**

### **4.1 OFFSITE MIGRATION NOTIFICATION**

There is no known offsite migration of contamination at the subject property. An offsite migration notice has not been filed with the MDEQ, nor is it required for this property.

### **4.2 ABANDONED CONTAINER NOTIFICATION**

GPI has completed a hazardous material inspection. The inspection found one 55-gallon drum believed to contain paint waste located in the service garage, and one partially-full drum of what was believed to be grease was located on the second floor of former Plant 2. GPI has scheduled to have the contents of the containers characterized, and the containers removed and properly disposed at a licensed facility.

### **4.3 EASEMENT HOLDER NOTIFICATION**

A written notification will be made to all identified utility and easement holders of property in the general vicinity of the subject property's known contamination that contaminants could cause unacceptable exposures.

### **4.4 MITIGATION OF FIRE AND EXPLOSION HAZARDS**

There are no fire or explosion hazards on the subject property that would require their mitigation.



## 5.0 COMPLIANCE WITH SECTION 7A SUMMARY

### 5.1 EXACERBATION

Exacerbation can occur when an activity undertaken by the owner/operator of a property causes the existing contamination to migrate beyond the property boundaries. An owner/operator can also exacerbate contamination by changing the facility conditions in a manner that would increase the response activity costs for the liable party. A person that causes exacerbation would be responsible for remediation of the contamination they caused or for the increase in the response activity costs.

Anticipated future development activities on the property that may result in the disruption of contaminated soil or groundwater will be performed in accordance with all applicable state and federal regulations, including Part 201, and the laws and regulations listed in Part 201 Section 20107a Administrative Rule 1005, included as Appendix 1. A record describing the handling of the soil and/or groundwater and its final disposition will be maintained.

A SMP should be developed prior to any future site development activities. The SMP defines procedures for managing soils to be excavated during site development. The purpose of the document is to provide construction managers and contractors with information and guidance on potential environmental concerns that may be encountered during the excavation and relocation of soils during any future development activities.

If groundwater is encountered during future site development, no pumping or dewatering of groundwater shall be completed without proper characterization of the groundwater, and evaluation of the potential for known existing groundwater impacts to be exacerbated. Any groundwater generated during site activities will be properly handled or disposed in accordance with state and federal regulations.

Site groundwater will not be utilized for any purpose (including drinking water and irrigation), other than groundwater monitoring, if necessary. Potable water is provided by the City of Kalamazoo.

After redevelopment, the normal daily use of the subject property will not result in exacerbation of known subsurface impacts and will not increase response costs for known subsurface impacts. No activities will be conducted by GPI during normal daily operations that will potentially disturb contaminated soils and/or groundwater.

## 5.2 DUE CARE

Owners and operators must exercise due care by undertaking response activities that are necessary to prevent unacceptable exposures to contamination. If soils are contaminated above DCC for the residential land use at the surface of the property, then people must be prevented from coming into contact with those soils by restricting access, installing a protective barrier, or removing contaminated soil. Protective barriers can be clean soil, concrete, paving, etc.

Based on available analytical data and site use information, unacceptable exposure to subsurface contamination does not appear to be occurring at the subject property (due to the paved surfaces). Site personnel will have no contact with subsurface soil during normal daily activities at the subject property.

Based on the Phase II ESA data, the subject property is a *facility*, as defined in Part 201 of PA 451, 1994, as amended, due to the presence of PCE, TCE, benzo(a)pyrene, fluoranthene, phenanthrene, arsenic, chromium, copper, lead, mercury, selenium, xylenes, and zinc in soil; and cis-1,2-DCE, TCE, vinyl chloride, Cr+6, iron, lead, nickel, and mercury in groundwater at concentrations exceeding applicable Part 201 GRCC.

The potential exists for contaminated soils to be encountered during excavation activities. Site employees that have the potential to contact surface or subsurface soils will be informed by GPI of the presence of the contaminants on the subject property, and the measures they must take to protect against unacceptable exposure will be identified. This will include discussions of PPE and personal cleanliness. In the event utility or construction workers must perform activities that may expose them to the subject property's soils and/or groundwater, they will be notified of the presence of potential contamination prior to conducting work at the subject property to allow appropriate PPE to be used, and proper management of soils and groundwater to occur. All subsurface work will be conducted by properly trained personnel in accordance with all applicable local, state, and federal regulations (MIOSHA, etc.).

Any utility and/or easement holders will be notified in writing of the subsurface contamination by the owner or operator to avoid any potential unacceptable risks for workers.

## 5.3 REASONABLE PRECAUTION

Taking reasonable precautions against the reasonably foreseeable actions and omissions of a third party means trying to prevent things that could cause a third party to be exposed to an unacceptable risk. Based on available data and the presence of exposure barriers (building floors, paved driveways and parking areas, and clean fill soil used to elevate the subject property above the flood plain) that prevent the public from coming into contact with known subsurface contamination at the subject property, unacceptable

exposure is not expected at the subject property. Site groundwater will not be utilized for any purpose other than groundwater monitoring, if necessary. Potable water will be obtained from municipal authorities. In addition, all subsurface activities must be approved by GPI, and be conducted in accordance with all applicable state and federal regulations. These actions and the exposure barriers in place will protect against the reasonably foreseeable acts or omissions of a third party.

#### **5.4 PROVIDE REASONABLE COOPERATION, ASSISTANCE, AND ACCESS**

GPI will allow an authorized person to conduct response activities on the property (such as liable person or the MDEQ), including such actions as installing monitoring wells, operating a remediation system, etc. However, the statute specifically states that this shall not be interpreted as providing any right of access not expressly authorized by law. The authorized person must still go through the normal process of acquiring voluntary or court ordered access.

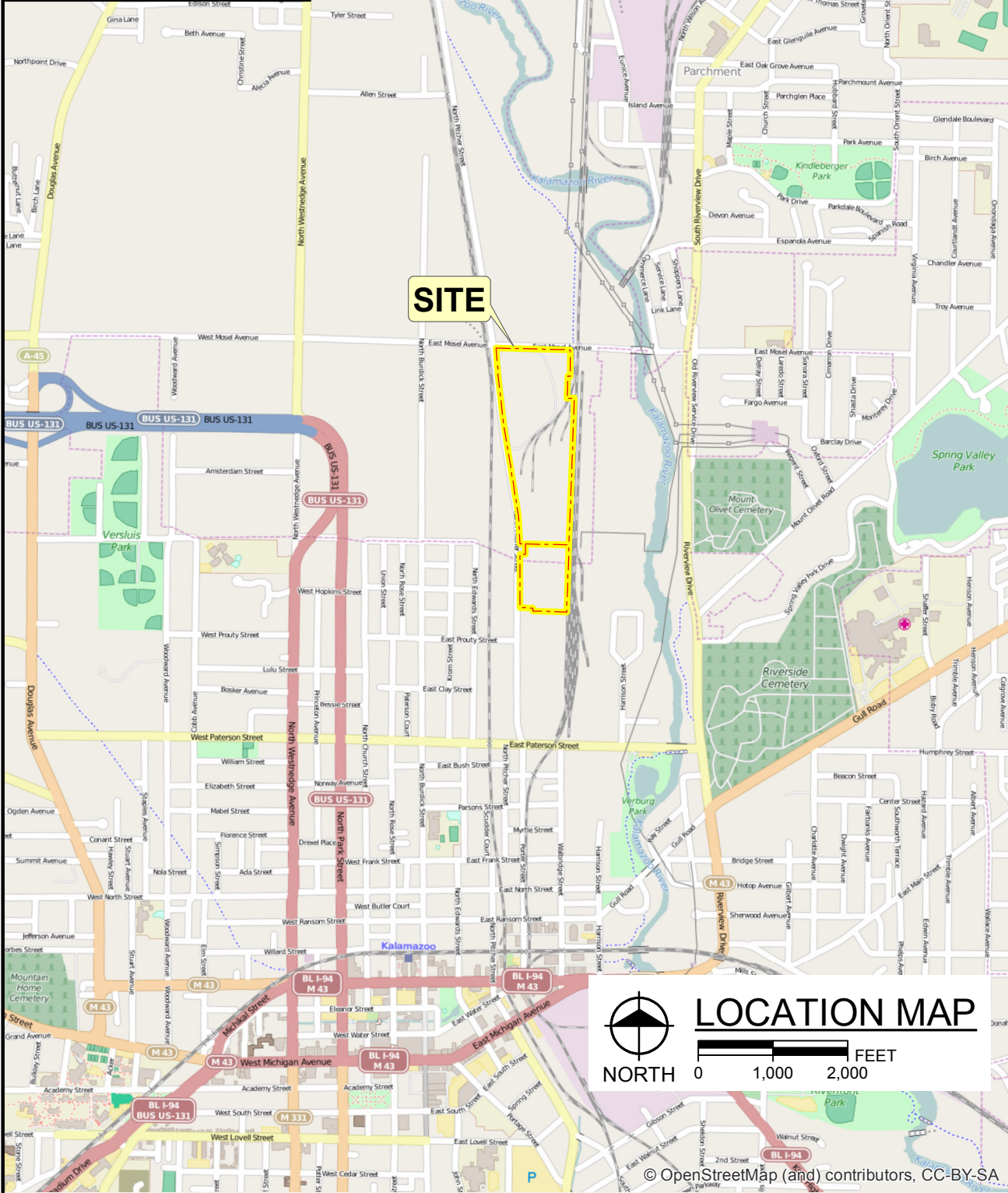
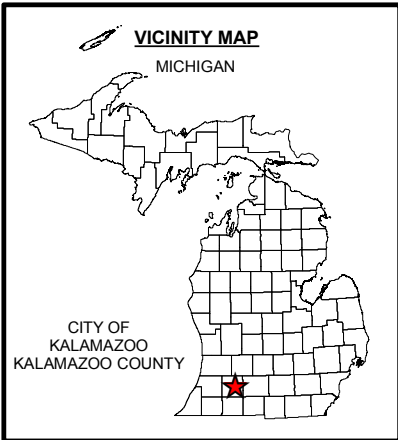
#### **5.5 COMPLY WITH AND NOT IMPEDE EFFECTIVENESS OF LAND AND RESOURCE USE RESTRICTIONS**

GPI is required to comply with any established land use restrictions and/or institutional controls, and is not to impede the effectiveness or integrity of any institutional control employed in connection with a response action.

#### **5.6 DUE CARE DOCUMENTATION**

GPI must maintain documentation that due care requirements have been evaluated and any response actions that are needed have been taken. The documentation does not need to be submitted to the MDEQ, but must be available for the MDEQ to review upon request within eight months of becoming the owner or operator or having knowledge that the property is a *facility*. Documentation requirements are described in Part 201 Section 20107a Administrative Rule 1003 Subrule (5), included as Appendix 1.

# Figures

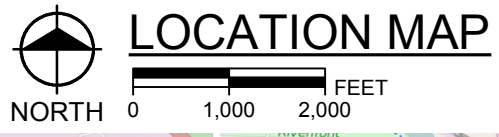


engineers  
scientists  
architects  
constructors

fishbeck, thompson,  
carr & huber, inc.

Hard copy is intended to be 8.5"x11" when plotted. Scale(s) indicated and graphic quality may not be accurate for any other size.

**Graphic Packaging**  
Former Checker Motors, Kalamazoo, Michigan  
**Due Care Plan**

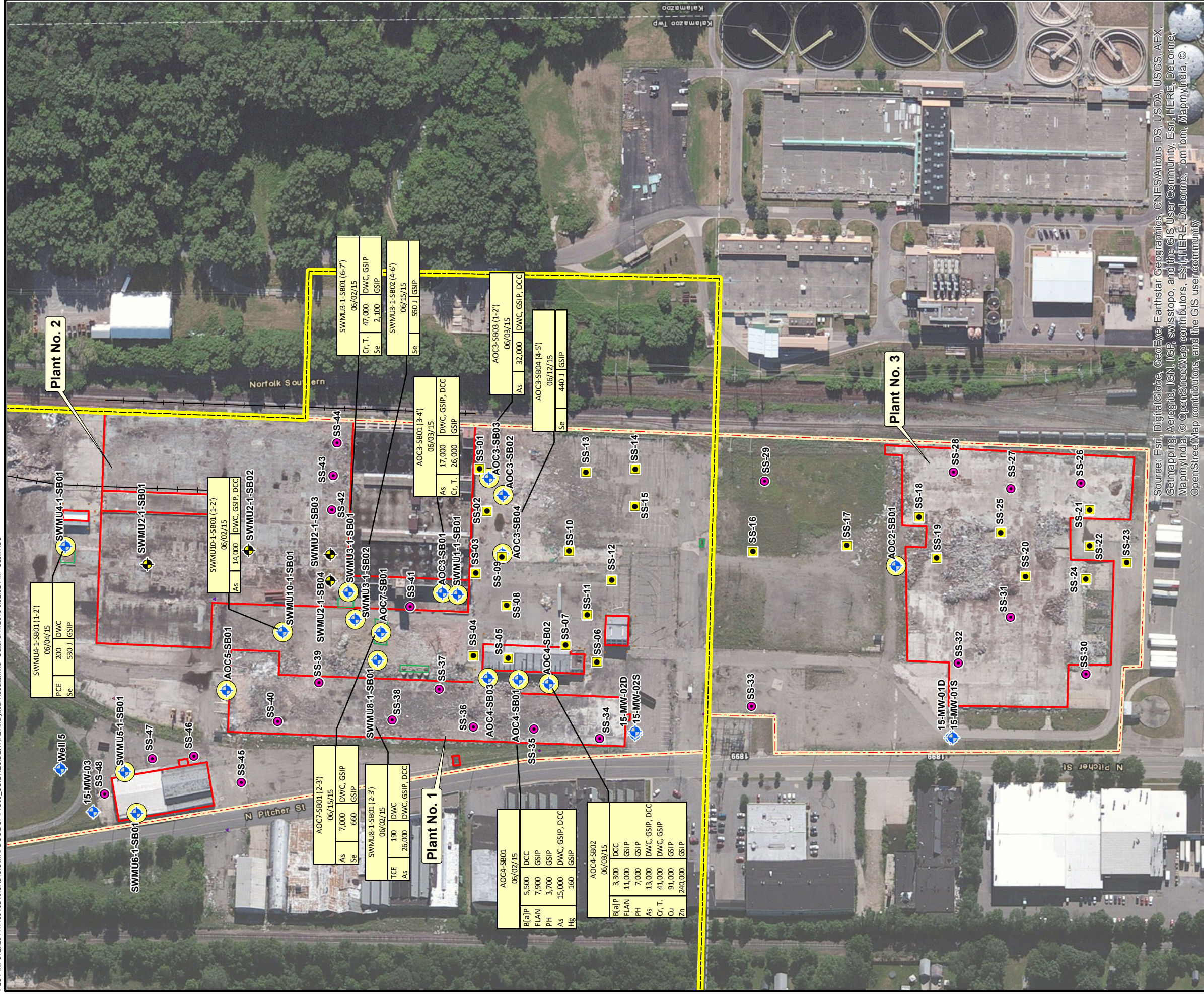


PROJECT NO.  
G140513B15

FIGURE NO.  
**1**  
© Copyright 2014  
All Rights Reserved

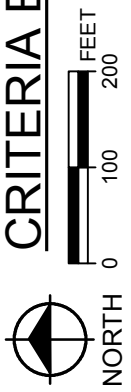
PLOT INFO: Z:\2014\140513B15\CAD\GIS\MAP\DOC\DCP\FIG01\_LOCATION MAP.mxd Date: 9/11/2015 3:24:41 PM User: ACS





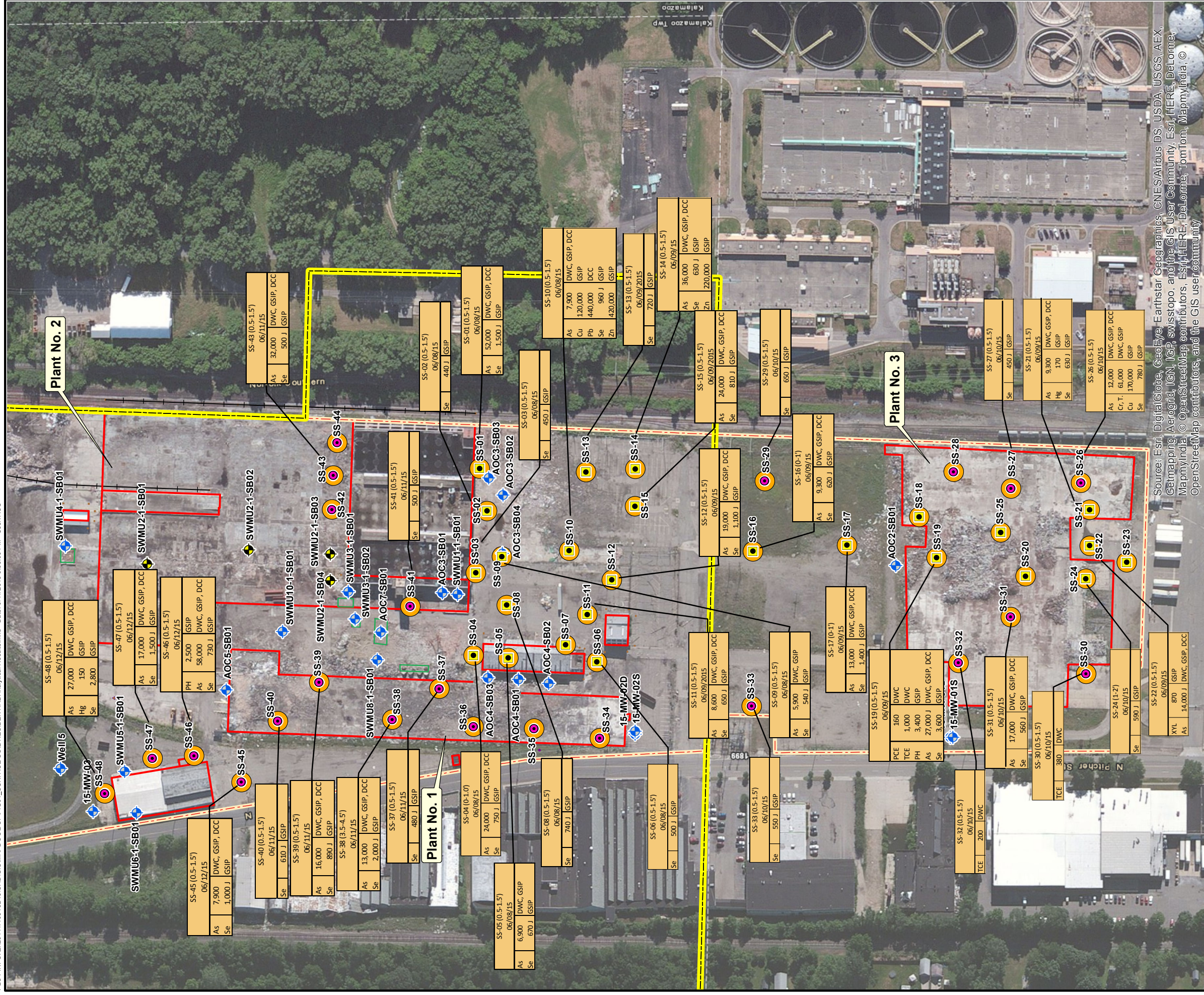
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Esri, HERE, DeLorme, TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS user community

**SOIL ANALYTICAL RESULTS (SWMU/AOC) RESIDENTIAL EXPOSURE CRITERIA EXCEEDANCES**



- LEGEND**
- Soil Sample and Temporary Monitoring Well
  - Temporary Monitoring Well
  - Soil and Soil Gas Sampling
  - Surficial Soil Sampling
  - Soil Sample (June 2015)
  - City Boundary
  - Building Footprints
  - Parcel
- All results in ug/Kg.  
 As - total arsenic  
 Cr, T - total chromium  
 Cu - total copper  
 B[a]P - benzo(a)pyrene  
 FLAN - fluoranthene  
 Hg - total mercury  
 PCE - tetrachloroethene  
 PH - phenanthrene  
 Se - total selenium  
 TCE - trichloroethene  
 Zn - total zinc  
 DWC - drinking water protection criterion  
 GSIP - groundwater surface water interface protection criterion  
 DCC - direct contact criterion

**Graphic Packaging**  
 Former Checker Motors, Kalamazoo, Michigan  
**Due Care Plan**



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Esri, HERE, DeLorme, TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS user community

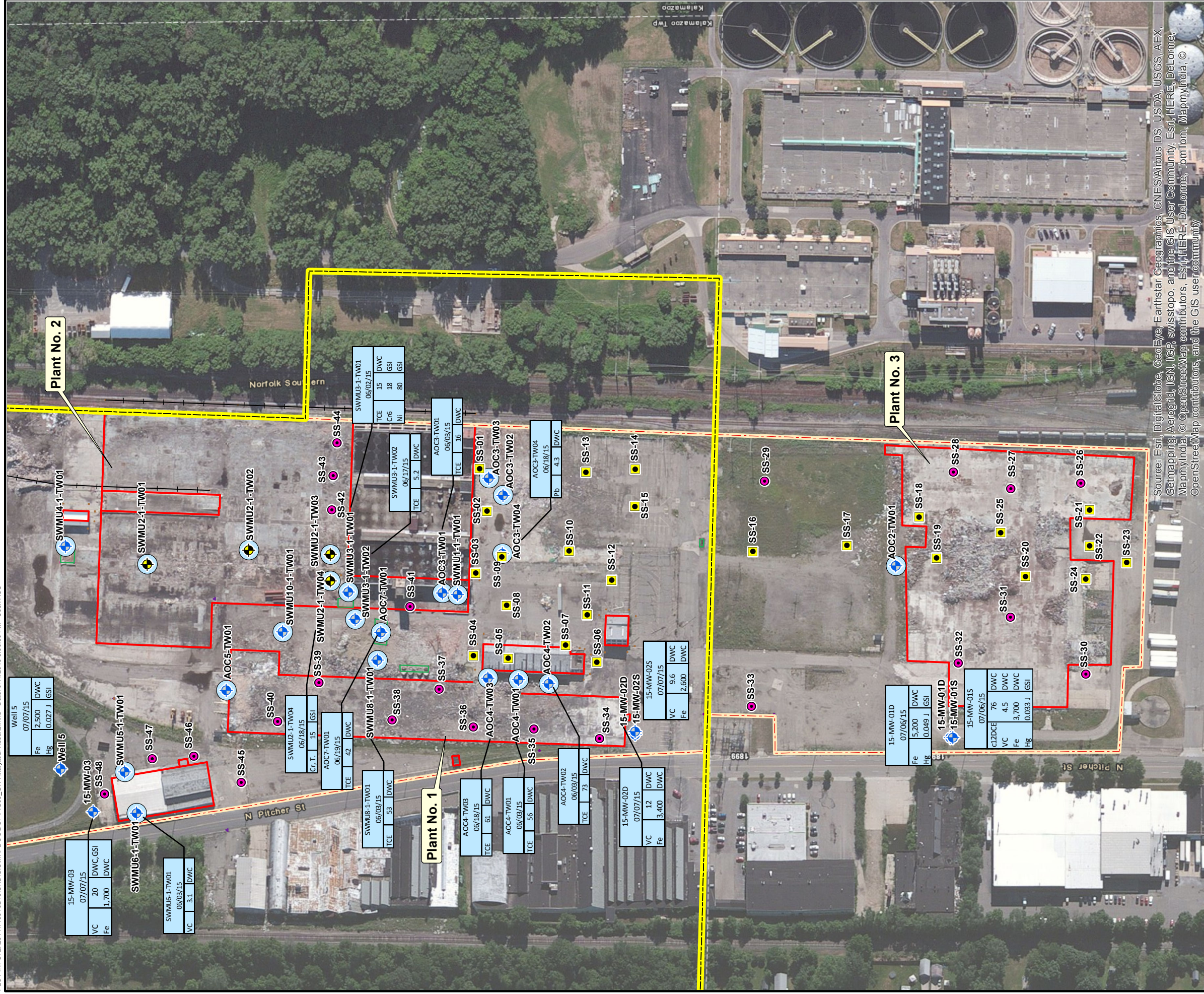
# SURFACE SOIL ANALYTICAL RESULTS RESIDENTIAL EXPOSURE CRITERIA EXCEEDANCES



- LEGEND**
- ◆ Soil Sample and Temporary Monitoring Well
  - ◆ Temporary Monitoring Well
  - Soil and Soil Gas Sampling
  - Surficial Soil Sampling
  - Surface Soil Sample (June 2015)
  - City Boundary
  - Building Footprints
  - Parcel
- All results in ug/Kg.
- As - total arsenic
  - Cr, T - total chromium
  - Cu - total copper
  - Hg - total mercury
  - PCE - tetrachloroethen
  - PH - phenanthrene
  - Se - total selenium
  - TCE - trichloroethene
  - XYL - total xylenes
  - Zn - total zinc
  - DWC - drinking water criterion
  - GSIP - groundwater-surface water interface protection criterion
  - DCC - direct contact criterion

PROJECT NO.	G140513B15
FIGURE NO.	4



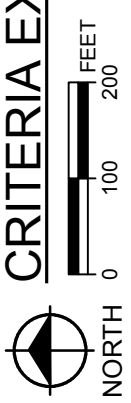


Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Esri, HERE, DeLorme, TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS user community

**LEGEND**

- Soil Sample and Temporary Monitoring Well
  - Temporary Monitoring Well
  - Soil and Soil Gas Sampling
  - Surficial Sampling
  - Groundwater Sample (June 2015)
  - City Boundary
  - Building Footprints
  - Parcel
- All results in ug/L
- Cr6 - hexavalent chromium
  - Cr, T, - total chromium
  - Fe - iron
  - Ni - total nickel
  - Pb - total lead
  - Hg - mercury
  - cl2DCE - cis-1,2-dichloroethene
  - TCE - trichloroethene
  - VC - vinyl chloride
  - DWC - drinking water criterion
  - GSI - groundwater surface water interface

**GROUNDWATER ANALYTICAL RESULTS RESIDENTIAL EXPOSURE CRITERIA EXCEEDANCES**



engineers  
scientists  
architects  
constructors

fishbeck, thompson, carr & huber, inc.

Hard copy is intended to be 11"x17" when plotted. Scale(s) indicated and graphic quality may not be accurate for any other size.

---

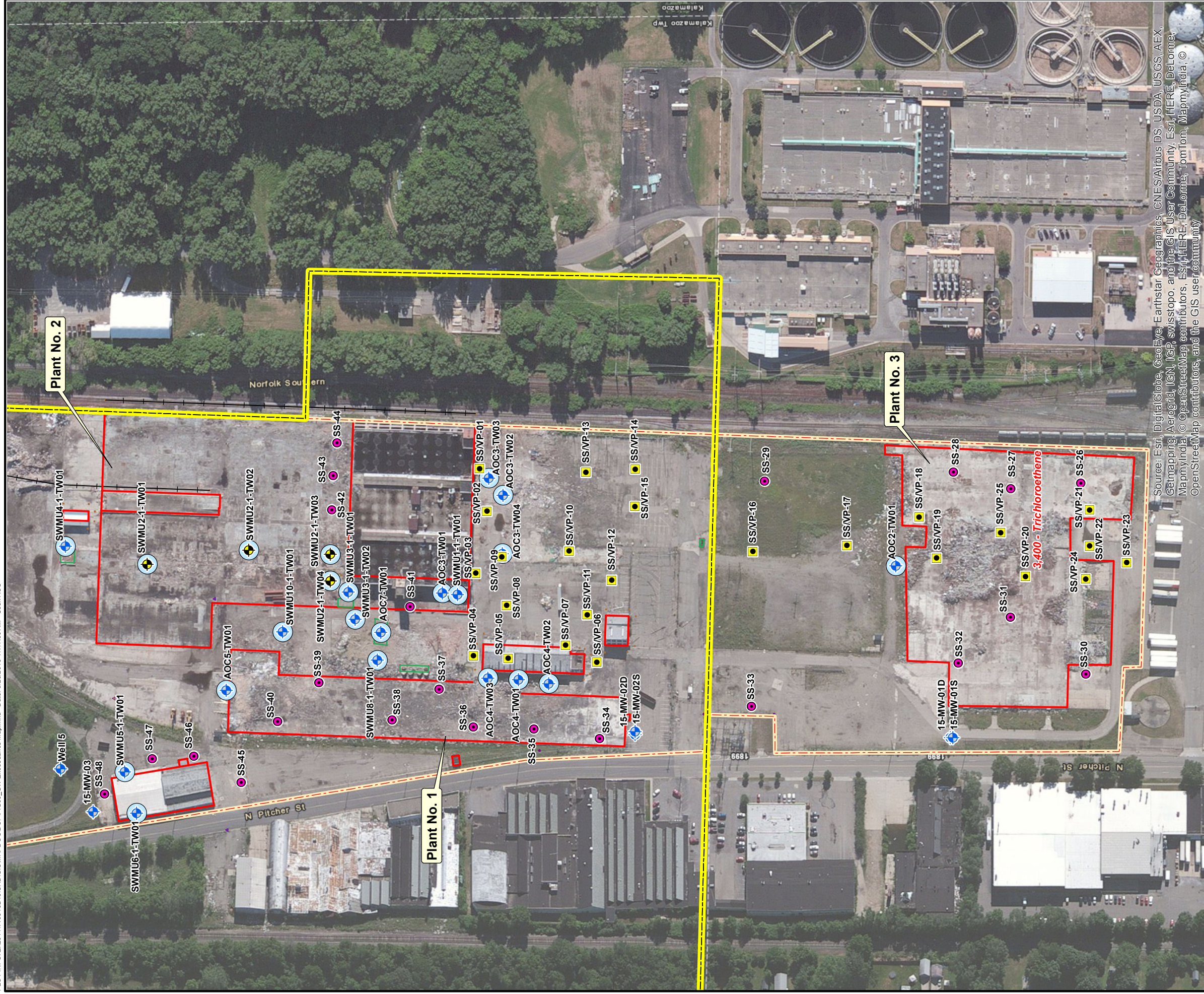
**Graphic Packaging**  
Former Checker Motors, Kalamazoo, Michigan

**Due Care Plan**

---

DRAFT	
PROJECT NO. G140513B15	FIGURE NO. <b>5</b>

©Copyright 2015 All Rights Reserved

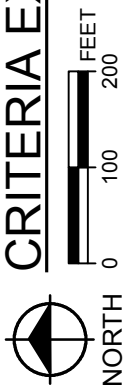


Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Esri, HERE, DeLorme, TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS user community

**LEGEND**

- Soil Sample and Temporary Monitoring Well
- Temporary Monitoring Well
- Soil and Soil Gas Sampling
- Surficial Soil Sampling
- Groundwater Sample (June 2015)
- City Boundary
- Building Footprints
- Parcel
- 3,400 Vapor Sample Exceedance

**VAPOR POINTS  
RESIDENTIAL EXPOSURE  
CRITERIA EXCEEDANCES**



*Indoor Air, Soil, Gas, Groundwater, and Soil Screening Values For the Vapor Intrusion Pathway, Nonresidential Land Use, MDEQ RRD, May 23, 2013.*

Results expressed in  $\mu\text{g}/\text{m}^3$  dry weight.

**fishbeck, thompson,  
carr & huber, inc.**

Hard copy is intended to be 11"x17" when plotted. Scale(s) indicated and graphic quality may not be accurate for any other size.

**engineers  
scientists  
architects  
constructors**

---

**Graphic Packaging**  
Former Checker Motors, Kalamazoo, Michigan

**Due Care  
Plan**

---

DRAFT	
PROJECT NO. G140513B15	
FIGURE NO. <b>6</b>	

©Copyright 2015  
All Rights Reserved

# Appendix 1

DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIRONMENTAL RESPONSE DIVISION

ENVIRONMENTAL CONTAMINATION RESPONSE ACTIVITY

(By authority conferred on the department of environmental quality by section 20104 of 1994 PA 451, MCL 324.20104 and Executive Order No. 1995-18, MCL 324.99903)

PART 10. COMPLIANCE WITH SECTION 20107a OF ACT

R 299.51001 Definitions.

Rule 1001. As used in this part:

(a) "All appropriate inquiry" means the inquiry necessary to determine what response activity is needed to comply with section 20107a of the act.

(b) "Belowground" means buried under soil or debris. "Belowground," when used to describe containers, does not include containers that are in basements or vaults or are otherwise under the ground surface in structures that allow visual inspection of the container.

(c) "Container" means a barrel, drum, tank, vessel, surface impoundment, pipeline, or other receptacle, regardless of size, that contains a hazardous substance.

(d) "Mitigate" means to reduce exposure to the degree that the exposure is no longer unacceptable, consistent with R 299.51013. With respect to fire and explosion hazards, "mitigate" means to eliminate the threat of fire and explosion.

(e) "Property" means the real property owned or operated by a person who is subject to section 20107a of the act.

History: 1999 MR 2, Eff. Mar. 11, 1999; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.51003 Applicability; compliance with section 20107a of act generally; documentation of compliance.

Rule 1003. (1) The requirements of this part apply to a person who is subject to section 20107a of the act and to conditions about which he or she has knowledge, based upon all appropriate inquiry.

(2) For purposes of compliance with part 10 of these rules, an acquiring agency under 1980 PA 87, MCL 231.51 et seq., and known as the uniform condemnation procedures act, shall not become the owner or operator of a property that is a facility or a portion of a facility until possession of the facility or portion of the facility has been transferred to the acquiring agency.

(3) A person who is subject to section 20107a of the act shall, except as provided in R 299.51019, undertake response activity as necessary to comply with section 20107a of the act and these rules on the property that he or she owns or operates and provide notices as described in R 299.51017 with respect to a hazardous substance that he or she has reason to believe is emanating from, or has emanated from, and is present beyond, the boundary of the property that he or she owns or operates.

(4) The requirements of section 20107a of the act apply to all of the following:

(a) Discarded or abandoned containers that contain a quantity of hazardous substance which is or may become injurious to the public health, safety, or welfare or to the environment.

(b) A threat of release of a quantity of hazardous substance that is or may become injurious to the public health, safety, or welfare or to the environment.

(c) Hazardous substances that have otherwise been released at the property.

The requirements do not apply to hazardous substances being lawfully used in operations at the property or being properly stored at the property.

(5) A person who is subject to section 20107a of the act shall maintain documentation of compliance with section 20107a of the act and shall provide the documentation to the department upon request. All of the following provisions apply to the documentation of compliance:

(a) With regard to section 20107a(1)(b) of the act, required documentation shall consist of all of the following:

(i) Identification of exposure pathways that are complete, or are likely to become complete, in light of the intended use of the property and the features of the property, including potential exposure barriers such as structures or pavement.

(ii) Information about the concentrations of hazardous substances to which persons may be exposed in each pathway identified through the analysis described in paragraph (i) of this subdivision, unless a reasonable evaluation of the conditions at the property supports the conclusion that quantification of hazardous substance exposures is not necessary to determine that there is no unacceptable exposure under R 299.51013.

(iii) A description of the response activity or other measures, such as work schedule adjustments or personal protective equipment, if any, that are or may be required to mitigate any unacceptable exposures in compliance with R 299.51013.

(iv) Records about the implementation of any response activity or other measures not evident through inspection.

(v) Copies of any notices provided under R 299.51013(6), R 299.51015, and R 299.51017.

(b) If compliance with section 20107a of the act is accomplished by measures that are evident as the result of inspection, such as fences, pavement, or the presence of buildings, then ongoing documentation, beyond the initial analysis of the measures, is not required.

(c) If a department-approved remedial action plan has been implemented at a facility, then additional documentation of compliance with section 20107a(1)(b) of the act is not required if conditions that determine exposures to hazardous substances at the property remain unchanged.

(6) Except as provided in R 299.51017(4)(c), the documentation required by subrule (5) of this rule shall, for a person who became the owner or operator of a facility before March 11, 1999, be available to the department upon request not later than March 11, 2000. For a person who became the owner or operator of a facility on or after March 11, 1999, the required documentation shall be available to the department upon request not later than 8 months after the earliest of the date of purchase, occupancy, or foreclosure. The time frames specified in this subrule do not alter the continuing obligation of a person who is subject to section 20107a of the act to be in compliance with the law and these rules.

History: 1999 MR 2, Eff. Mar. 11, 1999; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.51005 Compliance with other laws and regulations.

Rule 1005. (1) The obligation of a property owner or operator to comply with all laws and regulations applicable to hazardous substances is unaffected by part 201 of the act and these rules, except as provided in sections 20129a(5) and 20142 of the act.

(2) Other laws and regulations that may be relevant to the management of hazardous substances include, but are not limited to, the following:

(a) Part 55 of the act (air pollution control).

(b) Part 111 of the act (hazardous waste management).

(c) Part 115 of the act (solid waste management).

(d) Part 211 of the act (underground storage tank regulation).

(e) Part 213 of the act (leaking underground storage tanks).

(f) Part 615 of the act (supervisor of wells).

(g) Act No. 207 of the Public Acts of 1941, as amended, being S29.1 et seq. of the Michigan Compiled Laws, and known as the fire protection code.

(h) The toxic substances control act, 15 U.S.C. S2601 et seq.

(i) The resource conservation and recovery act, 42 U.S.C. S6901 et seq.

(j) Rules and regulations promulgated under the laws listed in subdivisions

(a) to (i) of this subrule.

History: 1999 MR 2, Eff. Mar. 11, 1999.

R 299.51007 Compliance with section 20107a(1)(a) of act.

Rule 1007. (1) The result of an activity undertaken by the owner or operator of a property is not exacerbation through an increase in response activity costs if the activity satisfies both of the following conditions:

(a) Any resulting increase in response activity cost is small in relation to the total cost of response activity that would be required to satisfy the relevant land use-based cleanup criteria and other requirements of sections 20120a and 20120b of the act or section 21301a of the act, as appropriate to the facility, at the time the activities are undertaken. Examples of such response activity include, but are not limited to, the placement of pavement or landscaping cover that constitutes a barrier to direct contact.

(b) The activity undertaken provides environmental or public health benefits.

(2) There may also be other circumstances that an owner or operator can demonstrate are not a change in facility conditions which increase response activity costs.

(3) Notwithstanding subrules (1) and (2) of this rule, if a determination is made under section 20107a(2) of the act that an action constitutes exacerbation, then the determination of the amount owed as increased response activity costs shall be reduced based on consideration of the public health or environmental benefits, or both, provided by the action.

(4) This rule shall not modify the burden of proof set forth in section 20107a(2) of the act.

History: 1999 MR 2, Eff. Mar. 11, 1999.

R 299.51009 Compliance with section 20107a(1)(b) of act; discarded or abandoned aboveground containers.

Rule 1009. (1) To be in compliance with section 20107a(1)(b) of the act with respect to a container at the property that is on or above the ground surface, and with respect to the portion of a container that is partially on or above the ground surface, an owner or operator shall manage the container in a manner that can be reasonably expected to prevent a release from the container in a quantity which is or may become injurious to the public health, safety, or welfare or to the environment. However, if the container is too large to allow it to be moved practically to inspect the integrity of the entire container, then the owner or operator shall prevent a release in a quantity that is or may become injurious to the public health, safety, or welfare or to the environment that would be evident from inspection of the visible portions of the container and the surrounding surface.

(2) If containers are located inside a structure that, upon reasonable inquiry, is determined to be deteriorating, then the owner or operator shall take reasonable and prudent measures to assure that deterioration of the structure does not lead to damage to the containers which may result in a release.

(3) If a release occurs from a container as a result of a failure to comply with subrule (1) or (2) of this rule, then the owner or operator shall stop the release and take all other steps necessary to comply with requirements applicable to a new release.

(4) The requirements of this rule shall be in addition to the requirements of other applicable laws and regulations to which the owner or operator is subject, except as provided in sections 20129a(5) and 20142 of the act.

History: 1999 MR 2, Eff. Mar. 11, 1999.

R 299.51011 Compliance with section 20107a(1)(b) of act; belowground containers.

Rule 1011. (1) To be in compliance with section 20107a(1)(b) of the act with respect to belowground containers at the property, an owner or operator shall prevent or eliminate any unacceptable exposure to hazardous substances in, or released from, a belowground container and shall eliminate any fire and explosion hazard resulting from hazardous substances in, or released from, a belowground container.

(2) Compliance with section 20107a of the act does not require that belowground containers be emptied, unless a container must be emptied to satisfy a performance standard under this rule. Other requirements to which the owner or operator is subject may require belowground containers, such as underground storage tanks, to be emptied. R 299.51005 identifies some other potentially applicable laws and rules.

History: 1999 MR 2, Eff. Mar. 11, 1999.

R 299.51013 Unacceptable exposure; mitigation.

Rule 1013. (1) Except as provided in subrule (6) of this rule, the requirements of section 20107a(1)(b) of the act and these rules to mitigate unacceptable exposure shall be satisfied if a person does all of the following:

(a) Eliminates the exposure or reducing the exposure to the degree that it is no longer unacceptable as that term is described in subrules (3), (4), and (5) of this rule.

(b) Undertakes response activity at the property as necessary to mitigate off-property risks resulting from erosion of surface soils at the property or from dispersion of particulate or volatile hazardous substances in surface soils at the property.

(c) Complies with R 299.51005, R 299.51009, R 299.51011, and R 299.51015 to R 299.51019 with regard to conditions at the property.

(2) In evaluating compliance with section 20107a(1)(b) of the act, exposure pathways shall be considered pertinent only if they are or may be complete in light of the intended use of the property and the features of the property, including potential exposure barriers such as structures or pavement.

(3) Except as provided in subrules (4) and (5) of this rule, exposure to hazardous substances is an unacceptable exposure for the purposes of section 20107a(1)(b) of the act if concentrations of hazardous substances to which persons may be exposed exceed an applicable criterion developed by the department under section 20120a(1)(a) to (e) of the act.

(4) A site-specific evaluation may be conducted to document that conditions at a property do not result in an unacceptable exposure. In these cases, comparison of exposure concentrations to criteria developed by the department under section 20120a(1)(a) to (e) of the act is not required. Except as provided in subrule (5) of this rule, an evaluation relied upon under this subrule shall be consistent with the risk management objectives set forth in section 20120a of the act and risk assessment methods acceptable to the department.

(5) As described in this subrule, a site-specific evaluation to document that conditions at the property do not result in an unacceptable exposure through inhalation of indoor air may be based on a demonstration of compliance with 1974 PA 154, MCL 408.1001 et seq., and the rules promulgated under 1974 PA 154. This subrule applies only when all of the following conditions are satisfied:

(a) The risk being evaluated results from inhalation by workers of hazardous substances in indoor air within an active commercial or industrial workplace that is regulated by 1974 PA 154, MCL 408.1001 et seq., and the rules promulgated under 1974 PA 154.

(b) The exposure to hazardous substances from environmental contamination is a portion of the exposure to which workers are otherwise subject from process-related sources of the same hazardous substance.

(c) The risk to the non-worker population, if any, from inhalation of indoor air at the property has been evaluated according to the requirements of subrule (3) of this rule or a site-specific evaluation has been conducted for the non-worker population according to risk assessment methods acceptable to the department, and the risk is not unacceptable on the basis of the risk management objectives set forth in section 20120a of the act.

(6) If the hazardous substances present at the property may present an unacceptable exposure to utility workers or other persons conducting activities at the property in an easement, under the terms of a utility franchise, or pursuant to severed subsurface mineral rights or severed subsurface formations, then the owner or operator may satisfy his or her obligation to mitigate unacceptable exposures to the utility workers or other persons by providing written notice, by a method that provides proof of delivery, of the general nature and extent of contamination and potential unacceptable exposures to all of the following:

(a) Easement holders of record.

(b) Utility franchise holders of record.

(c) The owner or operator of all public utilities that serve the property.

(d) Owners or lessees of severed subsurface mineral rights or subsurface formations. If the person described in subdivisions (a) to (d) of this subrule is not an individual, then the notice shall be provided to the chief executive officer of the organization. The notice required under this rule shall be provided as

soon as the exigencies of the situation require, but not later than 9 months after the effective date of this amendatory rule or the deadline set forth in R 299.51003(6), whichever is applicable.

(7) Upon request of a person to whom information is provided under subrule (6) of this rule, the owner or operator of property who provided notice under subrule (6) of this subrule shall provide all available information about conditions at the property that he or she owns or operates which are relevant to the activities of the person who received notice under subrule (6) of this rule. The owner or operator of a property who is subject to section 20107a of the act shall also provide, to other persons conducting activities at the property with the knowledge or permission of the owner or operator, information about conditions at the property that are relevant to the person's activities at the property.

History: 1999 MR 2, Eff. Mar. 11, 1999; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.51015 Notice to department of discarded or abandoned containers.

Rule 1015. (1) Except as provided in subrules (2), (3), and (4) of this rule and in R 299.51021, an owner or operator who is subject to section 20107a of the act shall notify the department, in writing, of the presence of discarded or abandoned containers at the property that contain a quantity of hazardous substance which is or may become injurious to the public health, safety, or welfare or to the environment. The owner or operator shall provide the required notice by September 11, 1999, within 45 days of becoming the owner or operator, or within 45 days of acquiring knowledge of the discarded or abandoned containers, whichever is later. The notice required by this rule shall include all information known to the owner or operator about the number, type, size, and contents of the discarded or abandoned containers.

(2) The notification requirement of subrule (1) of this rule does not apply to an owner or operator who disposes of discarded or abandoned containers and their contents according to all applicable laws and regulations by September 11, 1999, within 45 days of becoming the owner or operator, or within 45 days of acquiring knowledge of the discarded or abandoned containers, whichever is later. If the response activity is not complete within 45 days, then an owner or operator shall give notice that would otherwise have been required by subrule (1) of this rule to the department within 14 days after the end of the 45-day period provided in this subrule to complete the response activity.

(3) In place of the notice required by subrule (1) of this rule, a person who owns or operates an underground storage tank that is subject to notice or registration requirements, or both, under other state or federal requirements shall comply with the notice or registration requirements.

(4) If an owner or operator discloses a baseline environmental assessment under section 20126(1)(c)(ii) of the act, and the baseline environmental assessment includes identification of discarded or abandoned containers at the property on a form provided by the department for that purpose, then separate notice under subrule (1) of this rule is not required. Identification of an underground storage tank in a baseline environmental assessment does not eliminate or modify the obligation of an owner or operator to comply with any notice or registration requirements applicable to the underground storage tank under other state or federal requirements.

History: 1999 MR 2, Eff. Mar. 11, 1999; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.51017 Notice to department and to affected adjacent property owners of contamination migrating beyond boundaries of property owned or operated by person subject to section 20107a of act; special provisions for notice by permittees under part 615 of act and by easement holders.

Rule 1017. (1) A person who is subject to section 20107a of the act and who has reason to believe that a hazardous substance is emanating from, or has emanated from, and is present beyond his or her property boundaries at a concentration in excess of criteria developed by the department under section 20120a(1)(a) of the act shall provide notice to the department and to the owner of the affected adjacent property as required in subrules (4) and (5) of this rule, except that subrules (4) and (5) shall not apply for permitted releases. The notices required by this subrule shall also be made if hazardous substances emanating from his or her property enter surface waters of the state on or adjacent to the property in concentrations that exceed generic GSI criteria established under R



299.5716. The requirement to notify the department and the affected adjacent property owner shall be based on reasonable inferences that can be made from available data about the facility, including, but not limited to, data gathered through investigation undertaken to comply with section 20114(1)(a) of the act.

(2) A person who holds a permit for an oil and gas well under part 615 of the act and is subject to section 20107a of the act, shall provide the notice required by this rule to the department and to owner of the surface rights of the property if a release from the oil and gas exploration or production activities results in hazardous substance concentrations in excess of criteria developed by the department under section 20120a(1)(a) or (17) of the act on property where the well or related surface activity exists. This notice is required in addition to the migration notice required by subrule (1) of this rule, if applicable.

(3) A person who holds an easement and is subject to section 20107a of the act, shall provide notice, as called for in subrule (1) of this rule, to the department and to the grantor of the easement, or the grantor's successor in interest, if any, if there is a release from the easement holder's activities that results in hazardous substance concentrations in excess of criteria developed by the department under section 20120a(1)(a) or (17) of the act on property where the easement exists. Such notice shall be in addition to the notice required by subrule (1) of this rule, if applicable to the release in question.

(4) A person shall provide the notice required by subrule (1) of this rule to the department and to the affected adjacent property owner, in writing, within the following time frames:

(a) Except as provided in subdivision (c) of this subrule, with regard to conditions that were not known to the owner or operator before March 11, 1999, notice shall be provided within 45 days after the owner or operator has reason to believe that hazardous substances have migrated, or are likely to have migrated, beyond the property boundary.

(b) Except as provided in R 299.51021 and subdivision (c) of this subrule, with regard to conditions that were known to the owner or operator before March 11, 1999, notice shall have been provided by June 9, 1999.

(c) If a person is required to provide additional notice as a result of these amendatory rules, then the additional notice shall be made and included in the documentation of compliance required by R 299.51003(5) not later than 9 months after the effective date of these amendatory rules.

(5) The department may prescribe a form to be used for reports made under this rule. All of the following information shall be included in a report provided under this rule:

(a) The location of the property.

(b) The name, address, and telephone number of the property owner or operator who is submitting the notice.

(c) The name, address, and telephone number of a contact person familiar with the content of the notice.

(d) The name, chemical abstract service number, and maximum measured concentration of the hazardous substance or substances that have migrated, or are likely to have migrated, up to or beyond the property boundary.

(6) A person who has provided the notice required by section 21309a of the act is not required to make the notice to affected adjacent property owners called for in subrule (1) of this rule.

History: 1999 MR 2, Eff. Mar. 11, 1999; 2002 MR 24, Eff. Dec. 21, 2002.

R 299.51019 Mitigating fire and explosion hazards; action and notice required.

Rule 1019. (1) An owner or operator who is obligated to mitigate a fire or explosion hazard under section 20107a(1)(b) of the act shall provide immediately notify the local fire department of the hazard and shall take such other steps as are reasonable and prudent under the circumstances to mitigate or eliminate the hazard.

(2) If initial action does not permanently abate the fire and explosion hazard, then, within 7 days after notice is provided under subrule (1) of this rule, the owner or operator shall provide written notice to the department. The notice shall include all of the following information:

(a) A description of the conditions that resulted in a fire or explosion hazard.

(b) The date and time that notice was provided to the local fire department.

(c) A description of the response provided by the local fire department.

(d) A description of conditions which remain that may require additional action to mitigate fire or explosion hazards due to hazardous substances at the property.

History: 1999 MR 2, Eff. Mar. 11, 1999.

R 299.51021 Applicability of rules to persons who have received affirmative determinations of compliance with section 20107a of act under section 20129a of act.

Rule 1021. If, before March 11, 1999, a person received a determination from the department under section 20129a of the act that the person's proposed use of a facility satisfies the person's obligations under section 20107a of the act, then these rules shall not be applied retroactively to impose additional obligations upon the person or alter the department's determination with regard to the compliance analysis that was submitted. If the department's affirmative determination was conditioned on the implementation of response activity, then this rule shall apply to the owner or operator only if the response activity was implemented in a timely manner.

History: 1999 MR 2, Eff. Mar. 11, 1999; 2002 MR 24, Eff. Dec. 21, 2002.