

**AN ORDINANCE OF THE TOWNSHIP OF STURGIS
REGULATION OF USE OF DRINKING WATER WELLS**

ORDINANCE NO. 2014-1

ADOPTED: JANUARY 17, 2014

EFFECTIVE: MARCH 1, 2014

AN ORDINANCE PROVIDING FOR THE REGULATION AND RESTRICTION OF
WELLS IN CERTAIN AREAS OF THE TOWNSHIP

The Township of Sturgis, St. Joseph County, Michigan ordains:

Section 1: Findings. The Sturgis Township Board (the "Board") accepts the conclusions of the Michigan Department of Environmental Quality establishing that certain groundwater wells and water supplies from such wells for human consumption may constitute a public health and welfare risk for certain residents of Sturgis Township (the "Township") due to potential impacts from elevated levels of certain metals and other constituents. The identified public health and welfare risk affects premises that are located in the vicinity of sites that are the source or location of impacted groundwater ("Restricted Zone" as further defined herein).

Section 2: Purpose. In accordance with its power to establish ordinances to protect the public health, safety and welfare under PA 246 of 1945, as amended, the Board has determined to regulate certain uses of water from wells at properties located in the vicinity of such impacted sites in order to minimize the public health and welfare risk and to protect the Township's residents. In the best interests of the public health, safety, and welfare, the Township has decided to regulate the construction of new "wells" within particular areas of the township, as defined below, and to require water quality testing on existing wells, under the provisions of this ordinance.

Section 3: Definitions. When used in this Ordinance, the following terms shall have the meanings set forth below:

- (a) "Applicant" means any Person wishing to install or use or allow for the installation or use of a new groundwater Well within the Restricted Zone.
- (b) "MDEQ" means the Michigan Department of Environmental Quality or its successor agency.
- (c) "Person or Persons" means any individual, partnership, corporation, association, company, firm, limited liability company, joint venture, or other legal or commercial entity.
- (d) "Persons Performing Response Actions With Respect to the Groundwater in the Restricted Zone" means any Person that is required under state law or has been directed by MDEQ to perform response actions with respect to

the groundwater in the Restricted Zone and that has entered into an agreement with the Township that confirms such Person's obligations under this ordinance.

- (e) "Restricted Zone" shall mean an area described as follows:
- (f) Those areas lying in Sections 3, 4, 9 and 10, Township of Sturgis, County of St. Joseph, Michigan, shown as the green and red shaded areas on Exhibit A attached hereto.
- (g) "Well" means an opening in the surface of the earth for the purpose of removing water from the ground through non-mechanical or mechanical means for purposes of using the water as a drinking water source. Well shall not mean removal of water i) to obtain groundwater as part of a response action consistent with the Michigan Natural Resources and Environmental Protection Act of 1994, as amended, or ii) by wells not used for drinking water or other human consumption.

Section 4: Regulations Respecting Installation and Use of Wells in the Restricted Zone.

Section 4(a) Prior Approval of New Wells Required. From and after the effective date of this ordinance, any Applicant wishing to install or use or allow for the installation or use of a new groundwater Well within the Restricted Zone must provide written notice to the Township and to the Branch-Hillsdale-St. Joseph Community Health Agency ("Community Health Agency") at least ten (10) days prior to the installation. Such notice shall contain a written proposal for approval to install the new Well, including a certification that the proposed installation will comply with the requirements of Section 4(b) of this Ordinance. The Township shall ensure notification to those identified Persons Performing Response Actions With Respect to the Groundwater in the Restricted Zone upon receipt of a written notice of intent to install a new Well pursuant to this Section.

Section 4(b) Installation of New Wells. From and after the effective date of this ordinance, all new Wells to be installed in the Restricted Zone must be drilled in accordance with the Well Installation Program, a copy of which is attached hereto as Exhibit B. New Wells to be located in the green shaded section of the Restricted Zone, as shown on Exhibit A shall be screened at a minimum depth of one hundred (100) feet below ground surface unless the Community Health Agency, after consultation with Persons Performing Response Actions With Respect to the Groundwater in the Restricted Zone, determines that an alternative depth is necessary or acceptable. New Wells to be located in the red shaded section of the Restricted Zone, as shown on Exhibit A shall be screened at a minimum depth of one hundred eighty (180) feet below ground surface unless the Community Health Agency, after consultation with Persons Performing Response Actions With Respect to the Groundwater in the Restricted Zone, determines that an alternative depth is necessary or acceptable. If the Community Health Agency approves an alternative depth, the Applicant shall submit to the Township or its designee a copy of the written approval received from the Community Health Agency. Partial reimbursement for the installation of new Wells may be available to the Applicant in accordance with the Well Installation Program described in Exhibit B.

Section 4(c) Existing Wells. If Persons Performing Response Actions With Respect to the Groundwater in the Restricted Zone conduct sampling of any existing Wells in the Restricted Zone in accordance with the performance of response actions pursuant to an Interim Remedial Action Plan approved by MDEQ or its predecessor agencies otherwise on the recommendation of MDEQ and such sampling indicates the presence of monitored constituents above applicable health-based drinking water criteria, Persons Performing Response Actions With Respect to the Groundwater in the Restricted Zone shall take, and the property owner or occupant shall allow, such other actions as required by MDEQ with respect to any such Wells in accordance with the Well Installation Program described in Exhibit B.

Section 5: Violation of Specified Conditions. No person or applicant shall install, implement or use a new Well within the Restricted Zone until such time as approval has been received from the Community Health Agency in accordance with paragraph 4(a) of this Ordinance. No Person shall violate any condition specified in a written approval issued by the Community Health Agency to such person or applicant under Section 4 of this Ordinance. The Township shall withhold occupancy permits for any new construction within the Restricted Zone if requested to do so by the MDEQ or Community Health Agency or their successor agency(ies) because no new Well permit has been applied for or obtained when one is required

Section 6: Notice to the Community Health Agency. Within seven (7) days after the Effective Date of this Ordinance, the Township shall provide a copy of this Ordinance to the Community Health Agency.

Section 7: Modification or Repeal of this Ordinance. In the event that this Ordinance is considered for amendment (including any amendment modifying the boundaries or adding additional areas to the Restricted Zone) or repeal, this Ordinance shall not be amended or repealed without thirty (30) days' prior written notice to MDEQ, the Community Health Agency, and Persons Performing Response Actions With Respect to the Groundwater in the Restricted Zone. Notwithstanding the foregoing, the Township Board may rescind this Ordinance in full in the event that Persons Performing Response Actions With Respect to the Groundwater in the Restricted Zone demonstrate (with MDEQ concurrence) that a public health and welfare risk no longer exists or that closure in the Restricted Zone has been achieved in accordance with an Interim Remedial Action Plan approved by MDEQ or its predecessor agency.

Section 8 : Penalties, Remedies and Enforcement

A. Enforcement. When either the Community Health Agency or Persons Performing Response Actions With Respect to the Groundwater in the Restricted Zone notifies the Township that a violation of this Ordinance exists with respect to a particular property or Well within the designated Restricted Zone, the Township shall take appropriate actions to enforce this ordinance.

B. Violation and Penalty. Any Applicant or other Person, who violates any of the provisions of this Ordinance shall be deemed to be responsible for a municipal civil infraction as defined by Michigan Statute which shall be punishable by a civil fine determined in accordance with the following schedule:

	Minimum Fine	Maximum Fine
- 1st Offense within 3-year period*	\$ 150.00	\$500.00
- 2nd Offense within 3-year period*	250.00	500.00
- 3rd Offense within 3-year period*	350.00	500.00
- 4th or More Offense within 3-year period*	500.00	500.00

*Determined on the basis of the date of commission of the offense(s).

Additionally, the violator shall pay costs which may include all expenses, direct and indirect, to which Sturgis Township has been put in connection with the municipal civil infraction. In no case, however, shall costs of less than \$9.00 nor more than \$500.00 be ordered. In addition, the Township shall have the right to proceed in any court of competent Jurisdiction for the purpose of obtaining an injunction, restraining order, or other appropriate remedy to compel compliance with this Ordinance. Each day that a violation exists shall constitute a separate offense.

C. Injunctive Relief. The Township may further enforce this Ordinance by action seeking injunctive relief in a court of competent jurisdiction against a Person in violation of this Ordinance. In such an action the Township shall be awarded its costs, damages, and actual attorney fees if the Township establishes that such Person was in violation of this Ordinance.

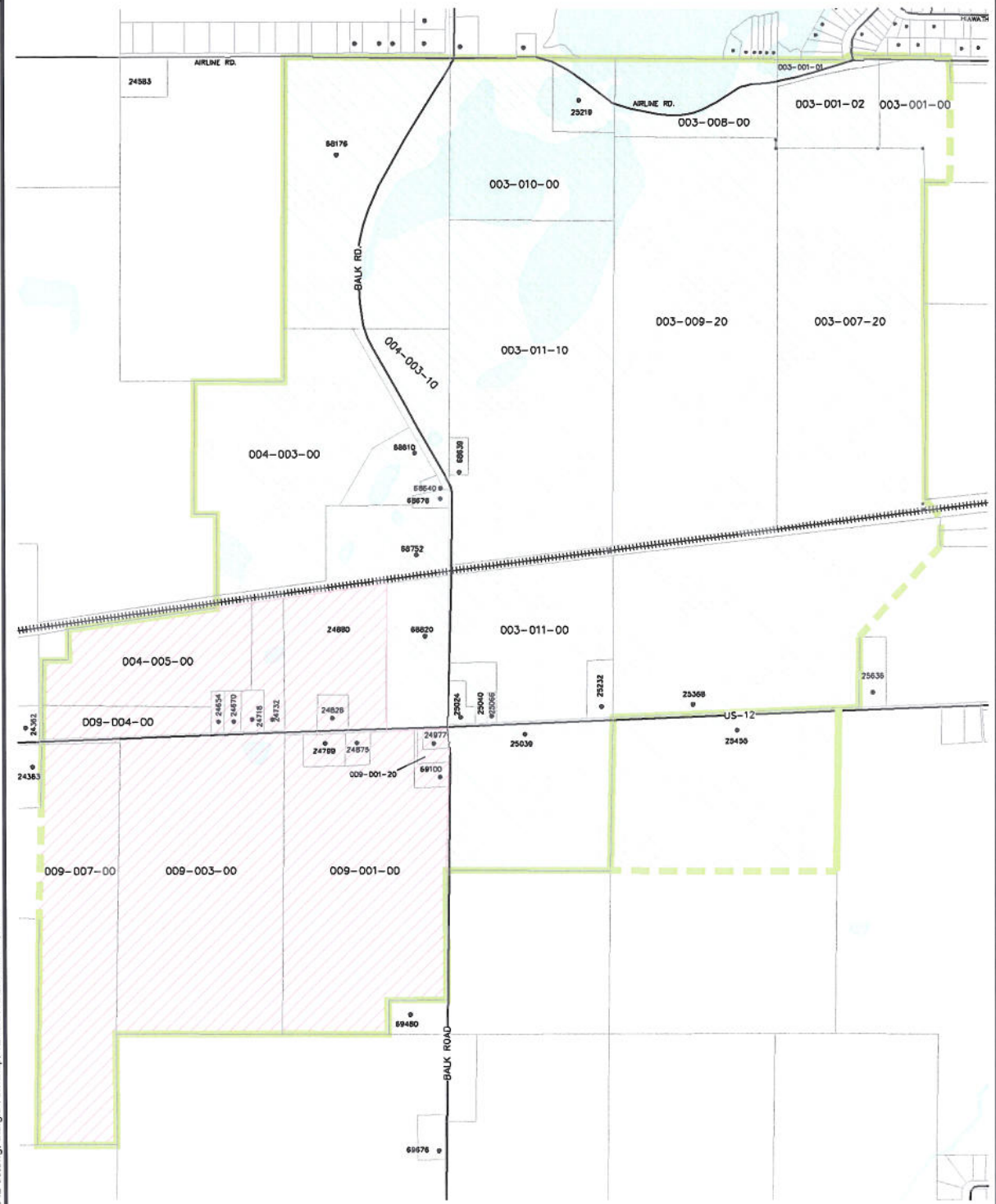
D. Public Nuisance. A violation of this Ordinance is hereby declared to be a public nuisance and shall be abated by immediately taking the Well out of service and properly abandoning and closing it. The Township may seek abatement of such public nuisance in a court of competent jurisdiction and, in such action, recover its costs, damages, and actual attorney fees.

Section 9: Other Ordinances; Severability. All provisions/sections of any Township Ordinances heretofore adopted, inconsistent with the provisions of this Ordinance are hereby repealed. In the event any part of this Ordinance is finally determined to be invalid or unenforceable by a court of competent jurisdiction, then said determination shall not affect the validity of the remaining provisions. The Township shall promptly notify MDEQ upon the occurrence of any event described in the preceding sentence.

Section 10: Effective Date. This Ordinance shall become effective thirty (30) days subsequent to publication of a summary thereof, after adoption by the Township Board.

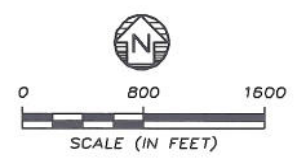
Sturgis Township
Mike Bobalik, Clerk
PO Box 6
Sturgis, MI 49091-0006
www.sturgistownship.org
269-651-3676

EXHIBIT A TO STURGIS TOWNSHIP ORDINANCE No. _____ RESTRICTED ZONE



LEGEND

- PROPERTY LINE
- SURVEY LINE
- INSTALL WELL TO AT LEAST 100 FEET
- INSTALL WELL TO AT LEAST 180 FEET
- PROPOSED ORDINANCE AREA
- WATER OR WETLAND



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Exhibit B to Ordinance No 2014-1
Well Installation Program

SECTION I. NEW WELLS TO BE LOCATED IN THE RESTRICTED ZONE

- A. The Environmental Health Code (“EHC”) for the Branch-Hillsdale-St. Joseph Community Health Agency (“Community Health Agency”) requires that an application for a well permit be made to the Community Health Agency. The party proposing the Well shall hereinafter be referred to as the “Applicant.”
- B. Upon submission of an application for a well permit for any new Well proposed to be located in the Restricted Zone, the Applicant will also notify the Township in accordance with Section 4(a) of Ordinance No. 2014-1. The Township will notify Persons Performing Response Actions With Respect to the Groundwater in the Restricted Zone as defined in Section 3 of Ordinance No. 2014-1 (hereinafter “Respondents”). Within 5 business days of receipt of notice from the Township of a new Well proposed to be located in the Restricted Zone, Respondents, or their designated contractors, shall contact the Applicant to coordinate the installation and hookup of the new Well.
- C. In accordance with Section 4(b) of Ordinance No. 2014-1, if the new Well is proposed to be located within the green shaded area on Exhibit A to Ordinance No. 2014-1, it must be installed and screened at a depth of at least 100 feet below ground surface. If the Well is proposed to be located within the red shaded area on Exhibit A to Ordinance No. 2014-1, it must be installed and screened at a depth of at least 180 feet below ground surface. Deviations from these minimum depths can only be approved by the Community Health Agency in consultation with Respondents.
- D. Any Applicant for a new Well proposed to be located in the Restricted Zone shall be responsible for the cost of installing the Well to a depth of 25 feet below ground surface (the minimum depth per regulation). Respondents shall be responsible for the additional cost to install the new Well to the minimum depth specified in Section I, Paragraph C above, provided the Applicant agrees to use the Michigan-licensed water well drilling contractor recommended by Respondents. The selected well drilling contractor shall bill Respondents directly for the additional costs associated with installing the new Well to the minimum depths specified in Section I, Paragraph C. above.
- E. Following permitting and approval by the Community Health Agency for any new Well proposed to be located in the Restricted Zone, Respondents or their designated contractor shall supervise the installation of the new Well to assure proper installation. All new Wells shall be constructed and installed according to the Michigan Well Construction Code Administrative Rules (R325.1601 through R325.1676). Each new Well installed in the Restricted Zone will be sampled by Respondents per Community Health Agency regulations and for the constituents

being monitored pursuant to an Interim Remedial Action Plan approved by the Michigan Department of Environmental Quality (“MDEQ”). The new Well will be put into service following approval from the Community Health Agency.

SECTION II. EXISTING WELLS LOCATED IN THE RESTRICTED ZONE

- A. If sampling of an existing Well located in the Restricted Zone pursuant to Section 4(c) of Ordinance No. 2014-1 (or otherwise in accordance with the performance of response actions pursuant to an Interim Remedial Action Plan prepared by Respondents and approved by MDEQ) indicates the presence of monitored constituents at concentrations above applicable health-based drinking water criteria, Respondents shall review the results with the Community Health Agency and MDEQ, who shall determine whether additional actions, if any, are necessary. Respondent shall propose any such additional actions to MDEQ for approval, and shall implement them in accordance with MDEQ approval.
- B. If an existing Well located in the Restricted Zone is sampled and the Community Health Agency or MDEQ determine that additional actions are necessary in accordance with Section II.A. above, Respondents shall supply the property owner or occupant with a source of alternative drinking water such as bottled water until such actions are completed.
- C. If the Community Health Agency or MDEQ determine that a new Well is necessary to address the presence of constituents being monitored by Respondents at concentrations above the health-based drinking water criteria, the existing Well must be properly abandoned and a new Well shall be installed in accordance with Section 4(b) of Ordinance No. 2014-1 and Section I of this Exhibit B, except that Respondents shall be responsible for the entire cost of installing the new Well.
- D. Any existing Well required to be abandoned under this Section II shall be properly abandoned by a Michigan-licensed water well drilling contractor recommend by Respondents, and in accordance with the Michigan Well Construction Code Administrative Rules. Respondents shall be solely responsible for all Well abandonment costs and the selected contractor shall bill Respondents directly for all Well abandonment costs.
- E. Respondents shall be responsible to repair any damage to property or landscaping arising from the installation of any new Well and abandonment of any existing Well required under this Section II.

**COOPERATION AGREEMENT REGARDING ORDINANCE NO. 2014-1
AN ORDINANCE OF THE TOWNSHIP OF STURGIS
ON REGULATION OF USE OF DRINKING WATER WELLS**

This COOPERATION AGREEMENT REGARDING ORDINANCE NO. 2014-1, AN ORDINANCE OF THE TOWNSHIP OF STURGIS ON REGULATION OF USE OF DRINKING WATER WELLS ("Agreement") is made and entered into this 17TH day of JANUARY, 2014, by and among STURGIS TOWNSHIP, MICHIGAN, a Michigan municipal corporation (the "Township"), and ABBOTT LABORATORIES d/b/a ABBOTT NUTRITION, an Illinois corporation ("Abbott").

WHEREAS, Abbott is performing environmental response activities near its manufacturing facility located in Sturgis, Michigan pursuant to a Long-Term Interim Remedial Action ("LTIRA") Plan submitted by Abbott to the Michigan Department of Environmental Quality ("MDEQ") and approved by MDEQ.

WHEREAS, the LTIRA Plan directed Abbott to evaluate with the Township institutional controls to restrict groundwater use in areas with known groundwater quality exceedences;

WHEREAS, as a result of that evaluation, the Township has enacted An Ordinance of the Township of Sturgis on Regulation of Use of Drinking Water Wells, known as Ordinance No. 2014-1 (the "Ordinance");

WHEREAS, Abbott and the Township desire to enter into an agreement regarding Abbott's technical and financial support for the Well Installation Program ("Program") set forth in the Ordinance;

WHEREAS, the Ordinance requires enforcement;

WHEREAS, Abbott has agreed to support the Township's enforcement of the Ordinance in accordance with the provisions set forth in this Agreement;

NOW THEREFORE, the Township and Abbott agree as follows:

1. Notice of New Well Application. Within five (5) days of receiving a notice of an application to install a new groundwater well within the Restricted Zone, as defined in the Ordinance, with respect to the properties shown in as the red and green shaded areas on Exhibit A attached hereto and incorporating the properties listed on Exhibit B attached hereto, the Township shall provide written notice of the application to Abbott.

2. Technical Input. As long as Abbott is a "Person Performing Response Actions with Respect to the Groundwater in the Restricted Zone," as defined in the Ordinance, Abbott agrees to perform, or have its designated representative perform, the following activities with respect to the Ordinance:

- Coordinate with any new Well Applicant for the installation and hookup of a new Well, pursuant to Section I, Paragraph B of the Program;
- Pay the additional cost to install a new Well to the minimum depth specified in Section I, Paragraph C of the Program, provided the Applicant agrees to use the Michigan-licensed water well drilling contractor recommended by Abbott. The selected well drilling contractor shall bill Abbott directly for the additional costs associated with installing the new Well to the minimum depths specified in Section I, Paragraph C of the Program;
- Supervise the installation of new Wells to assure their proper installation;
- Sample new Wells per Community Health Agency regulations and the constituents being monitored by Abbott pursuant to the LTIRA Plan;

- Supply alternative drinking water to properties as required under Section II, Paragraph B of the Program;
- Properly abandon existing Wells if required pursuant to Section II, Paragraph C of the Program;
- Install new Wells if required pursuant to Section II Paragraph C of the Program;
- Consult with the Township and the Community Health Agency, as defined in the Program, to provide technical and other assistance in connection with the Program and with the Township's enforcement of the Ordinance;
- Cooperate with the MDEQ and the Township to promptly consider revisions to the Ordinance if requested by the MDEQ or requested by Abbott in conjunction with compliance with the LTIRA Plan or related response actions with respect to the groundwater in the Restricted Zone.

3. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of each of the parties hereto.

4. No Waiver. Failure of any party to insist upon the strict performance of any term, covenant or condition of this Agreement, or to exercise any right or remedy herein contained, shall not be construed as a waiver or relinquishment of such term, covenant, condition, right or remedy for the future, or a waiver or relinquishment of any other term, covenant, condition, right or remedy set forth in this Agreement.

5. Construction. This Agreement shall be construed and interpreted as if drafted by each party. It is acknowledged that this Agreement is the product of negotiations between the parties and shall not be construed or interpreted against either party based on such party having drafted this Agreement or any portion thereof.

6. Headings. The headings of this Agreement are for convenience only and shall not affect the meaning or construction of this Agreement.

7. Partial Invalidity. Any determination by a court of competent jurisdiction that any provision of this Agreement is invalid for any reason shall not affect the validity of any other provision.

8. Agents and Employees. The rights and obligations granted to the Township and Abbott under this Agreement may be exercised or performed by them acting through their respective agents, employees, consultants, contractors and designees.

9. Modification or Amendment. This Agreement may not be modified or amended without the prior written authorization of the Township and Abbott. Notwithstanding the foregoing, the Township and Abbott agree that any modification or amendment of the Ordinance affecting any of Abbott's obligations under paragraph 2 of this Agreement shall render such obligation void and unenforceable unless Abbott and the Township agree to modify or amend this Agreement.

10. Term and Termination. This Agreement shall terminate upon the rescission of the Ordinance or upon a demonstration by Abbott (with MDEQ concurrence) that a public health and welfare risk no longer exists or that closure in the Restricted Zone has been achieved in accordance with the LTIRA.

11. Authority to Bind Parties. Each of the signatories to this Agreement represents that he/she has the authority to bind the party on whose behalf he/she has signed this Agreement.

12. Execution by Counterparts. This Agreement may be executed in a number of identical and separate counterparts, each of which is deemed to be an original, but all of which shall constitute collectively one Agreement.

Cooperation Agreement

TOWNSHIP OF STURGIS,

By: George Morse
George Morse
Its: Township Supervisor

STATE OF MICHIGAN)
COUNTY OF ST. JOSEPH) ss.

On this, the 1ST day of APRIL, 2014, before me, a Notary Public, the above-signing officers, personally appeared GEORGE MORSE, who acknowledged himself/herself to be the SUPERVISOR of the TOWNSHIP of STURGIS, a Michigan municipal corporation, and that he/she as such SUPERVISOR of the TOWNSHIP of STURGIS, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the municipal corporation by himself/herself as such SUPERVISOR.

In witness whereof, I hereunto set my hand and official seal

Notary Public, Michael A. Bobalik
County of ST. JOSEPH
State of MICHIGAN
Acting in ST. JOSEPH County
My commission expires: 2/5/2020

Michael A. Bobalik
Notary Public, State of Michigan
County of St. Joseph
My Commission Expires 2/5/2020
Acting in the County of ST. JOSEPH

Cooperation Agreement

ABBOTT NUTRITION

By: Michael P. Collins

Name: Michael P. Collins

Its: Engineering Manager, Abbott Nutrition

STATE OF Michigan
COUNTY OF St. Joseph) SS

The foregoing instrument was acknowledged before me on this 2 day of April, 2014, by Michael P. Collins the Engineering Manager of Abbott Nutrition, on behalf of said Company.

Evelyn Wolf
Notary Public
St. Joseph County, Michigan
Acting in St. Joseph County
My Commission Expires: October 25, 2016

EVERY WOLF
NOTARY PUBLIC - STATE OF MICHIGAN
SANT JOSEPH COUNTY
My Commission Expires October 25, 2016

