

Region 1 (New England Region), One Congress Street, Boston, Massachusetts 02114. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. If requesting a copy of the proposed consent decree, please so note and enclose a check in the amount of \$27.50 (25 cent per page reproduction cost) payable to the U.S. Treasury.

**Ronald Gluck,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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**DEPARTMENT OF JUSTICE**

**Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act**

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed Second Amendment to the Consent Decree, in *United States v. The Upjohn Co. et al., v. ABF Freight System, Inc., et al.*, Civil No. 1:92-CV-659 (W.D. Mich.), was lodged with the United States District Court for the Western District of Michigan on September 21, 2007, pertaining to the West KL Avenue Landfill Superfund Site (the "Site"), located on West KL Avenue, Oshtemo Township, Kalamazoo County, Michigan. The proposed Second Amendment to the Consent Decree amends a Consent Decree entered by the Court in 1992, and a First Amendment to that Consent Decree entered by the Court in 2005, that resolved the United States' civil claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against Pharmacia Corp., successor to The Upjohn Company; Kalamazoo County; Charter Township of Oshtemo; the City of Kalamazoo (collectively, the "Performing Settling Defendants"); and 219 additional Third-Party Defendant generators at the Site

(all defendants, collectively, the "Settling Defendants").

Under the proposed Second Amendment to the Consent Decree, the Performing Settling Defendants are obligated to implement a Record of Decision ("ROD") Second Amendment issued by the U.S. Environmental Protection Agency ("EPA") on September 12, 2005 ("2005 ROD Amendment"). The 2005 ROD Amendment: (1) Revises the boundary of the municipal water service to residences, moving the boundary further downgradient to include additional properties that have had Site-related contaminants detected in their drinking water wells; (2) replaces the active pump and treat remedy for the contaminated groundwater plume selected by the initial 1990 ROD with Monitored Natural Attenuation ("MNA") and contingent remedies; and (3) replaces the 1990 ROD cap design (which included a 2-feet thick clay capping layer) with a geosynthetic clay layer, a 40 mil geomembrane liner, a geocomposite drainage layer, an 18-inch layer of clean fill, and a vegetated 6-inch layer of topsoil.

Under the proposed Second Amendment to Consent Decree, Plaintiff and the Performing Settling Defendants agree to modify the terms of the Consent Decree, as provided by Paragraph 85 of the Consent Decree, to require the Performing Settling Defendants to implement the provisions of the 2005 ROD Amendment. The Settling Defendants other than the Performing Settling Defendants are not signatories to the proposed Second Amendment to the Consent Decree. The Second Amendment to the Consent Decree does not add to or change any of the settlement obligations of the Settling Defendants other than the Performing Settling Defendants, and none of the settling Third-Party Defendants will have any obligations to implement the provisions of the 2005 ROD Amendment. Pursuant to the simplified notification procedures of Paragraph 85 of the Consent Decree approved by the Court in 2005 under the First Amendment to the Consent Decree, the Settling Defendants other than the Performing Settling Defendants will not be separately notified of the material modifications to the work under the Consent Decree required by the 2005 ROD Amendment and the Second Amendment to the Consent Decree other than through this **Federal Register** Notice.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed

Second Amendment to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to United States Department of Justice, P.O. Box 7611, Washington, DC 20044-7611, and should refer to *United States v. The Upjohn Co. et al., v. ABF Freight System, Inc., et al.*, Civil No. 1:92-CV-659 (W.D. Mich.), and DOJ Reference No. 90-11-2-561.

The proposed Second Amendment to the Consent Decree may be examined at: (1) The Office of the United States Attorney for the Western District of Michigan, 330 Ionia Ave. NW., Suite 501, Grand Rapids, MI 49503, (616-456-2404); and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Blvd., Chicago, IL 60604-3507 (contact: Stuart Hersh (312-886-6235)).

During the public comment period, the proposed Second Amendment to the Consent Decree may also be examined on the following U.S. Department of Justice Web site, [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the proposed Second Amendment to the Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood ([tonia.fleetwood@usdoj.gov](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation no. (202) 514-1547. In requesting a copy from the Consent Decree Library, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of \$3.00 for the Second Amendment to the Consent Decree only (12 pages, at 25 cents per page reproduction costs), or \$21.00 for the Second Amendment to the Consent Decree and all appendices (84 pages), made payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**William D. Brighton,**

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