**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 5**

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| IN THE MATTER OF: | ) | ADMINISTRATIVE ORDER ON CONSENT |
| | ) | |
| GENERAL MOTORS CORPORATION | ) | U.S. EPA Docket No: RCRA-05-2007-0009 |
| | ) | |
| Pontiac Centerpoint Campus/ | ) | |
| Pontiac Assembly Center | ) | |
| Former Pontiac Truck Group | ) | Proceeding under Section 3008(h) of the |
| Pontiac, Michigan | ) | Resource Conservation and Recovery Act, |
| | ) | as amended, 42 U.S.C. § 6928(h). |
| EPA ID#: MID005356902 | ) | |
| | ) | |
| RESPONDENT. | ) | |
| | ) | |

## I. JURISDICTION

1. The Administrator of the United States Environmental Protection Agency ("U.S. EPA") is issuing this Administrative Order on Consent ("Order") to General Motors Corporation ("GM") under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6928(h). The Administrator has delegated the authority to issue orders under Section 3008(h) of RCRA to the Director, Waste, Pesticides and Toxics Division; U.S. EPA Region 5.

2. The GM facility encompasses approximately 400 acres of land and currently contains the Pontiac Centerpoint Campus, including the Pontiac Assembly Center. The Facility is bordered by South Boulevard to the north, the Grand Trunk Western Railroad to the south, Opdyke Road to the east, and Martin Luther King Jr. Boulevard to the west. In 1927, the Facility began producing medium and heavy duty trucks and buses at the former Pontiac Central Manufacturing and Assembly Plant, located on the north central portion of the Facility. The manufacturing operations were discontinued in 1990. The plant was decommissioned between 1991and 1995 and all buildings in the central portion of the facility were demolished and the area was redeveloped as the Centerpoint Business Campus, now named the Pontiac Centerpoint Campus (PCC). Presently, the Centerpoint Campus includes PCC-West (vehicle Pre Production Operations), PCC-Central (Engineering Center), PCC-East (commercial buildings), the Pontiac Assembly Center, a wastewater treatment plant and two stormwater retention ponds. For purposes of this Order, the Pontiac Centerpoint Campus, as depicted in more detail in Attachment 1, will be referred to as "the Facility".

3. GM agrees not to contest U.S. EPA's jurisdiction to issue this Order, to enforce its terms, or to impose sanctions for violations of the Order.

4. GM waives any rights to request a hearing on this matter pursuant to Section 3008(b) of RCRA and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA as a Consent Order issued pursuant to Section 3008(h) of RCRA.

## II. DEFINITIONS

5. This Order incorporates the definitions in RCRA, 42 U.S.C. §§ 6901 - 6922k, and the regulations promulgated under RCRA unless otherwise specified.

## III. PARTIES BOUND

6. This Order applies to and binds U.S. EPA, GM and its agents, successors, assigns, trustees, receivers, and all persons, including but not limited to contractors and consultants, acting on behalf of GM. GM will be responsible for and liable for any violations of this Order, regardless of GM's use of employees, agents, contractors, or consultants to perform work required by this Order.

7. No change in ownership or corporate or partnership status relating to the Facility will alter GM's obligations under this Order. Any conveyance of title, easement, or other interest in the Facility, or a portion of the Facility, will not affect GM's obligations under this Order. GM will give written notice of this Order and the land use restrictions required under this Order to any successor in interest prior to transferring ownership or operation of the Facility or a portion thereof and will notify U.S. EPA in writing at least 21 days prior to the transfer. This written notice will describe how GM has assured that, despite the transfer, all institutional controls required now or in the future for the Facility will be implemented and maintained. This paragraph will not apply if U.S. EPA and GM agree that this Order has terminated as to the Facility or any relevant portion of the Facility.

## IV. DETERMINATIONS

8. After consideration of the Administrative Record, the Director, Waste, Pesticides and Toxics Division; U.S. EPA Region 5 has made the following conclusions of law and determinations:

a. GM is a "person" within the meaning of Section 1004(15) of RCRA.

b. GM is the owner and operator of a Facility that has operated under interim status subject to Section 3005(e) of RCRA.

c. Certain wastes and constituents found at the Facility are hazardous wastes and/or hazardous constituents pursuant to Section 1004(5) and 3001 of RCRA and 40 C.F.R. Part 261.

d. There is or has been a release of hazardous wastes or hazardous constituents into the environment from the Facility.

e. GM has conducted investigations of the Facility and based on the results of those investigations has, among other things, removed soil contaminated with benzene, toluene, ethylbenzene and xylene (BTEX) and polynuclear aromatics (PNAs) at Area Of Interest (AOI) # 16, 42, 50, 52, 53, and 84; soil contaminated with lead at AOI # 44, 71, and 79; soil contaminated with solvents and paint at AOI # 75, 82, and 83; and recovered light non-aqueous phase liquid (LNAPL) from groundwater at AOI # 50 and 53.

f. On December 5, 2000, the U.S. EPA approved the Environmental Indicators ("EI") Determination for Current Human Exposures (CA 725) Report.

g. On December 5, 2000, the U.S. EPA approved the Environmental Indicators ("EI") Determination of Migration of Contaminated Groundwater Under Control (CA 750) Report.

h. On October 24, 2005, GM submitted a Corrective Measures Proposal (CMP) for the Facility. U.S. EPA approved the revised CMP on March 14, 2006.

i. On June 6, 2006, the public comment period began for the U.S. EPA approved corrective measures for the Facility and on July 21, 2006, the comment period ended.

j. On August 3, 2006, U.S. EPA made a Final Decision about the corrective measures for the Facility. The corrective measures include: implementation of a groundwater monitoring program at AOI #71 and AOI #53 to verify that concentrations of constituents remain stable or decline at the Facility boundary; recovery of LNAPL at AOI #53; and, implementing and maintaining institutional controls to restrict use of the Facility to non-residential purposes and to prohibit potable groundwater use at the Facility from within the water table zone unless and until groundwater meets applicable performance standards.

k. U.S. EPA has determined that those parts of the Facility not specifically covered by the August 3, 2006, Final Decision and/or not subject to use restrictions (see Exhibit 2 within Attachment 2 to this Order) are Corrective Action Complete without controls. However, U.S. EPA reserves the right to require additional Corrective Action should information become available or should there be a change in site conditions that indicate that there was/is a release of hazardous constituents to the environment which may pose a threat to human health and the environment, or that information contained in the administrative record regarding these parts of the Facility is invalid or inaccurate. Nothing in this Order binds or limits the State of Michigan in the exercise of its Corrective Action authorities.

## V. PROJECT MANAGER

9. U.S. EPA and GM must each designate a Project Manager and notify each other in writing of the Project Manager selected within 14 days of the effective date of this Order. Each Project Manager will be responsible for overseeing the implementation of this Project. The parties must provide prompt written notice whenever they change Project Managers.

## VI. WORK TO BE PERFORMED

10. Pursuant to Section 3008(h) of RCRA, GM agrees to and is hereby ordered to perform the actions specified in this section, in the manner and by the dates specified here. GM represents that it has the technical and financial ability to carry out corrective action at the Facility. GM must perform the work undertaken pursuant to this Order and in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant U.S. EPA guidance documents as appropriate to the Facility. This guidance includes, but is not limited to the Use of Institutional Controls in the RCRA Corrective Action Program, and relevant portions of the Model Scopes of Work for RCRA Corrective Action.

11. GM must assure that the institutional and engineering controls selected in the U.S. EPA's Final Decision are continually maintained unless and until U.S. EPA determines that performance standards have been met such that the controls are no longer necessary. GM must take all necessary measures to restrict the use of the Facility in any manner that may interfere with operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the remedy to be implemented pursuant to this Order. These measures and controls will be implemented through a Long-Term Monitoring (LM) Plan.

12. GM must implement the institutional controls selected in U.S.EPA's Final Decision and achieve the performance standards and/or human health risk based-criteria as provided in the approved LM Plan and any amendments thereto. The LM Plan shall, at a minimum, describe the activities, procedures, and applicable performance standards and/or human health risk based-criteria necessary for the construction, operation, maintenance, and completion of the U.S. EPA approved corrective measures and set forth an implementation schedule. Any modifications made under the LM Plan must be approved by U.S. EPA under paragraph 20 below.

13. For the purposes of Paragraphs 13-15 of this Order, 'U.S. EPA' shall mean the United States Environmental Protection Agency, its successor entities, and those persons or entities authorized to act on its behalf. GM shall file with the Oakland County Register of Deeds the Declaration of Restrictive Covenant ("Restrictive Covenant) attached hereto as

Attachment 2. Attachment 3 documents through a current encumbrances report that the property described in the Restrictive Covenant is free and clear of all encumbrances, including easement interests, except those identified therein. GM has provided a copy of the recorded Restrictive Covenant to all holders of record of said encumbrances. Documentation of such notice(s) is attached hereto as Attachment 4. In the Restrictive Covenant, GM, among other things, consents to U.S. EPA having a right of access to the Facility and provides the right to enforce through legal action in a court of competent jurisdiction the restrictions and covenants in the Restrictive Covenant to: (a) GM; (b) the Michigan Department of Environmental Quality (MDEQ) and its authorized representatives, under Part 201 (Environmental Remediation) of the Michigan Natural Resources and Environmental Protection Act, MCL § 324.20101 *et seq*.; and (c) the U.S. EPA and its authorized representatives, as a third party beneficiary. The Restrictive Covenant also provides for at least twenty-one (21) days notice to U.S. EPA and MDEQ prior to the transfer of any interest in the Facility. GM must ensure that the Restrictive Covenant remains in place and effective.

GM agrees to modify its rights in the Restrictive Covenant to change existing restrictions or to impose additional land and/or resource use restrictions that U.S. EPA determines are necessary to maintain a comparable level of protection against unacceptable risk to human health or the environment as a result of the discovery of facts unknown to U.S. EPA and GM on the effective date of this Order.

14. Any instrument transferring complete or partial possession or ownership of the Facility through sale, lease, deed or otherwise by GM, or memorandum thereof, shall be recorded with the Oakland County Register of Deeds and shall provide that:

a. GM reserves a right of access for the purpose of conducting any activity related to this Order; and reserves the right to enforce the restrictions and covenants in the Restrictive Covenant for (i) GM; (ii) U.S. EPA and its representatives, as third party beneficiary, and (iii) MDEQ and its representatives;

b. the transferee expressly agrees to comply with the Restrictive Covenant;

c. agreement to comply with the Restrictive Covenant shall be expressly included by any subsequent transferor in any instrument transferring complete or partial possession or ownership of the Facility;

d. U.S. EPA shall be expressly named in any instrument effecting such transfer of complete or partial possession or ownership of the Facility as a third party beneficiary of the right to enforce the restrictions and covenants in the Restrictive Covenant and such instrument shall provide that U.S. EPA may directly enforce such obligations and rights as against the transferee under such instrument and any successor to any such transferee; and

e. any subsequent instrument or memorandum thereof in the case of a lease, effecting such transfer of complete or partial possession or ownership of the Facility shall be recorded with the Oakland County Register of Deeds.

15. GM shall provide at least twenty-one (21) days prior written notice to U.S. EPA and MDEQ of any proposed conveyance of all or part of the Facility.

a. For any conveyance utilizing the form Covenant Deed attached hereto as Attachment 5, such notice shall include submittal to U.S. EPA of the draft conveyance document utilizing the form Covenant Deed and a current title search, commitment for title insurance or other evidence of title acceptable to U.S. EPA which documents that the recorded Restrictive Covenant remains in place and effective, as provided in Paragraph 13.

b. For any conveyance not utilizing the form Covenant Deed in Attachment 5, GM shall submit to U.S. EPA for review and concurrence that the instrument of conveyance complies with the requirements of Paragraph 14.

i. the proposed draft deed, in recordable form, or other instrument of conveyance, including a lease, that is enforceable under the laws of the State of Michigan;

ii. with respect to any lease, a memorandum of lease in recordable form setting forth the requirements of Paragraph 14 contained in such lease; and

iii. a current title search, commitment for title insurance or other evidence of title acceptable to U.S. EPA which documents that the recorded Restrictive Covenant remains in place and effective, as provided in Paragraph 13.

c. GM shall record the U.S. EPA approved instrument of conveyance, or memorandum thereof in the case of a lease, with the Oakland County Register of Deeds.

d. GM shall provide a true copy of the recorded instrument of conveyance, or memorandum thereof in the case of a lease, showing the liber and page of recordation to U.S. EPA within thirty (30) days after GM's receipt of a copy thereof from the Oakland County Register of Deeds.

16. GM shall implement a long-term groundwater monitoring program. Specifically, the groundwater monitoring program shall include periodic LNAPL monitoring at MW-1 at AOI #71 and at AOI #53. In addition, the program shall include groundwater monitoring at select monitoring wells to confirm that concentrations of constituents in these areas remain stable and meet risk based criteria under current and reasonably expected future land use at the Facility, taking into account the restrictions imposed through the Restrictive Covenant. The monitoring program shall be implemented through the LM Plan, submitted within 45 days of the effective date of this Order for U.S. EPA review and approval in accordance with Paragraph 20.

17. GM shall utilize a multi-phase extraction system (MPE) for the recovery of LNAPL beneath Building 33 (AOI # 53) pursuant to the U.S. EPA approved Former Building 33 Corrective Measures Work Plan (August 25, 2006). Long-term periodic monitoring shall be implemented to ensure that residual LNAPL and soil vapors do not pose a health hazard for future use of the area. If such hazards remain following the removal of LNAPL to the extent practical, institutional controls would be put in place to ensure that these hazards are mitigated. The monitoring program shall be implemented through the U.S. EPA approved LM Plan.

18. GM shall utilize a passive recovery to periodically remove LNAPL from monitoring well MW-1 at AOI # 71 and from MW-32 and MW-33 at LNAPL Area 2 for the duration as specified in the LM Plan. Recovery shall be performed using absorbents, bailing, or other methods. The recovery and monitoring program shall be implemented through the U.S. EPA approved LM Plan.

19. GM and U.S. EPA are developing a mechanism that will set forth and consolidate financial assurance requirements for corrective action at GM's facilities that are subject to U.S. EPA orders issued under Section 3008(h) of RCRA. In the event GM and U.S. EPA agree on such a mechanism, the parties agree that compliance with the terms of that mechanism will constitute compliance with the financial assurance terms of this Order. Absent such a mechanism, within 60 days of the approval date of the LM Plan, GM must submit for approval by U.S. EPA, financial security in the amount of the approved cost estimate, in one of the forms permitted under 40 C.F.R. § 264.145 (modified to replace the terms "post-closure" and "closure" with "corrective action" and referencing this Order, as approved by U.S. EPA). GM shall review the cost estimate on an annual basis and increase it for inflation. If GM determines that the estimated cost of the corrective action for the Facility has changed significantly from the approved cost estimate, it must promptly provide an explanation and a revised cost estimate to U.S. EPA within 60 days of its annual review. Within 60 days of U.S. EPA's written approval of a revised cost estimate, GM shall adjust the amount of the financial security provided under this Order to reflect the amount of the revised cost estimate.

20. For documents submitted by GM for U.S. EPA approval, U.S. EPA may provide GM with its written approval, its approval with conditions and/or modifications, disapproval, or disapproval with comments. U.S. EPA will provide a statement of reasons for any approval with conditions and/or modifications, disapproval or disapproval with comments. GM shall revise any such submittal in accordance with U.S. EPA's written comments and will submit to U.S. EPA any revised submittals within 30 days after receiving U.S. EPA's written comments (or a longer time if agreed to by the parties.) Revised submittals are subject to U.S. EPA approval, approval with conditions and/or modifications, disapproval, or disapproval with comments. U.S. EPA will provide GM with an opportunity for discussion before any unilateral modifications required by U.S. EPA under this Paragraph take effect. Upon receipt of U.S. EPA's written approval the submittal becomes an enforceable part of this Order.

21. Reporting and other requirements:

(a) GM must continue to maintain a publicly accessible repository for information related to the U.S. EPA's Final Decision for a minimum of 6 years after the effective date of this Order. Further, GM must continue to maintain a publicly accessible repository for information regarding implementation of this Order and must continue to conduct public outreach and involvement activities as appropriate.

(b) By March 1 of each year, GM must provide an annual report to U.S. EPA on its activities under this Order for the previous calendar year. The report must list work performed, data collected, problems encountered, and upcoming project schedule. The frequency of this report may be modified by agreement of the Project Managers.

(c) Independent of the annual reports under paragraph 21.(b), GM must provide advance written notice to U.S. EPA of any major activities or changes in operations at the Facility relevant to the Final Remedy. In addition, if GM notices in the normal course of business any major activities or changes in other owners' operations at the Facility which may be relevant to the Final Remedy, GM must provide prompt written notice to U.S. EPA of those activities or changes.

(d) The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order, and will meet on at least an annual basis to discuss the work proposed and performed under this Order. The frequency of this meeting may be modified by agreement of the parties.

(e) U.S. EPA may request supplemental information from GM related to implementation of the selected remedy for the Facility under this Order. GM must provide any supplemental information that U.S. EPA requests in writing in a timeframe requested by U.S. EPA or such longer timeframe as agreed to by the parties.

## VII. ACCESS

22. For the purposes of conducting any activity related to this Order, during GM's ownership of the Facility, upon reasonable notice, and at reasonable times, U.S. EPA, its contractors, employees, and any designated U.S. EPA representatives may enter and freely move about the Facility to exercise U.S. EPA's authority under RCRA, which may include among other things: interview GM personnel and contractors; review GM's progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as U.S. EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data GM submits to U.S. EPA. GM will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Order and that are within the possession or under the control of GM or its contractors or consultants. GM may request split samples, or copies of all photographs, tapes, videos or other recorded evidence created by U.S. EPA and releasable under the Freedom of Information Act. If GM transfers ownership of all or part of the Facility, it shall ensure access

for U.S. EPA, as provided in Paragraphs 13-15.

23. Nothing in this Section limits or otherwise affects U.S. EPA's right of access and entry under applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C.§§9601-9675.

## VIII. RECORD PRESERVATION

24. GM must retain, during the pendency of this Order and for at least six years after the Order terminates, all data and all final documents now in its possession or control or which come into its possession or control which relate to the subject of this Order. GM must notify U.S. EPA in writing 90 days before destroying any such records, and give U.S. EPA the opportunity to take possession of any non-privileged documents. GM's notice will refer to the effective date, caption, and docket number of this Order and will be addressed to:

Director
Waste, Pesticides and Toxics Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

GM must also promptly give U.S. EPA's Project Manager a copy of the notice.

25. GM will not assert any privilege claim concerning any data gathered during any investigations or other actions required by this Order.

## IX. STIPULATED PENALTIES

26. GM must pay the following stipulated penalties to the United States for violations of this Order:

(a) For failure to submit annual reports by the dates scheduled in paragraph 21.(b), above: $1,000 per day for the first 14 days and $2,000 per day thereafter.

(b) For failure to submit the LM Plan or revised LM Plan by the date scheduled in Paragraphs 16 and 20 above: $1,000 per day for the first 14 days and $2,000 per day thereafter.

(c) For failure to implement the terms of the approved LM Plan, including implementation schedules therein: $2,000 per day for the first 14 days and $4,000 per day thereafter.

(d) For failure to submit supplemental information as required and scheduled in paragraph 21.(e): $2,000 per day for the first 14 days and $4,000 per day thereafter.

(e) For failure to maintain the cost estimate and financial security as required and scheduled in paragraph 19 or in any superseding mechanism: $1,000 per day for the first 14 days and $2,000 per day thereafter.

(f) For failure to maintain the institutional controls as required in paragraph 12: $3,000 per day for the first 14 days and $6,000 per day thereafter.

27. Whether or not GM has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until GM complies. For item (c) in paragraph 26, above, if U.S. EPA identifies a violation based on an annual report submitted under paragraph 21.(b), stipulated penalties will not accrue during the period, if any, beginning 31 days after the submission of the annual report until the date that U.S. EPA notifies GM in writing of any violation. Separate stipulated penalties for separate violations of this Order will accrue simultaneously.

28. GM must pay any stipulated penalties owed to the United States under this Section within 30 days of receiving U.S. EPA's written demand to pay the penalties, unless GM invokes the dispute resolution procedures under Section X: Dispute Resolution. A written demand for stipulated penalties will describe the violation and will indicate the amount of penalties due.

29. Interest will begin to accrue on any unpaid stipulated penalty balance beginning 31 days after GM receives U.S. EPA's demand letter. Interest will accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. §3717, GM must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than 90 days overdue.

30. GM must pay all penalties by certified or cashier's check payable to the United States of America, or by wire transfer, and will send the check to:

U.S. Department of the Treasury
Attention: U.S. EPA Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

A transmittal letter stating the name of the Facility, GM's name and address, and the U.S. EPA docket number of this action must accompany the payment. GM will simultaneously send a copy of the check and transmittal letter to the U.S. EPA Project Manager.

31. GM may dispute U.S. EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section X: Dispute Resolution. The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. GM must pay stipulated penalties and interest, if any, according to the dispute resolution decision or agreement. GM must submit such payment to U.S. EPA within 30 days after receiving the

resolution according to the payment instructions of this Section.

32. Neither invoking dispute resolution nor paying penalties will affect GM's obligation to comply with the terms of this Order not directly in dispute.

33. The stipulated penalties set forth in this Section do not preclude U.S. EPA from pursuing any other remedies or sanctions which may be available to U.S. EPA for GM's violation of any terms of this Order. However, U.S. EPA will not seek both a stipulated penalty under this Section and a statutory penalty for the same violation.

## X. DISPUTE RESOLUTION

34. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.

35. If any party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other party's Project Manager of the dispute. The Project Managers will attempt to resolve the dispute informally.

36. If the Project Managers cannot resolve the dispute informally, either party may pursue the matter formally by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.

37. The parties will in good faith attempt to resolve the dispute through formal negotiations within 21 days, or a longer period if agreed in writing by the parties. During formal negotiations, any party may request a conference with appropriate senior management to discuss the dispute.

38. If the parties are unable to reach an agreement through formal negotiations, within 14 business days after any formal negotiations end, the parties may submit additional written information to the Director of the Waste, Pesticides, and Toxics Division, U.S. EPA Region 5. U.S. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. U.S. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, U.S. EPA will respond to GM's arguments and evidence and provide a detailed written decision on the dispute signed by the Director of the Waste, Pesticides, and Toxics Division, U.S. EPA Region 5 ("EPA Dispute Decision").

## XI. FORCE MAJEURE AND EXCUSABLE DELAY

39. Force majeure, for purposes of this Order, is any event arising from causes not foreseen and beyond GM's control that delays or prevents the timely performance of any

obligation under this Order despite GM's best efforts.

40. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, GM must notify U.S. EPA within two business days after learning that the event may cause a delay. If GM wishes to claim a force majeure event, within 15 business days thereafter GM must provide to U.S. EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

41. If U.S. EPA determines that a delay or anticipated delay is attributable to a force majeure event, U.S. EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as U.S. EPA determines is necessary to complete the obligation.

## XII. MODIFICATION

42. This Order may be modified only by mutual agreement of U.S. EPA and GM. Any agreed modifications will be in writing, will be signed by all the parties, will be effective on the date of signature by U.S. EPA, and will be incorporated into this Order.

## XIII. RESERVATION OF RIGHTS

43. Nothing in this Order restricts U.S. EPA's authority to seek GM's compliance with the Order and applicable laws and regulations. For violations of this Order, U.S. EPA reserves its rights to bring an action to enforce the Order, to assess penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2), and to issue an administrative order to perform corrective actions or other response measures. In any later proceeding, GM shall not assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by the United States in the later proceeding were or should have been raised here. This Order is not a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities of U.S. EPA.

44. If U.S. EPA determines that GM's actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health or the environment, or that GM cannot perform any of the work ordered, U.S. EPA may order GM to stop implementing this Order for the time U.S. EPA determines may be needed to abate the release or threat and/or order GM to take any action that U.S. EPA determines is necessary to abate the release or threat.

45. GM does not admit any of U.S. EPA's factual or legal determinations. Except for the specific waivers in this Order, GM reserves all of its rights, remedies and defenses, including all rights and defenses it may have: (a) to challenge U.S. EPA's performance of work; (b) to challenge U.S. EPA's stop work orders; and (c) regarding liability or responsibility for conditions

at the Facility, except for its right to contest U.S. EPA's jurisdiction to issue or enforce this Order. GM has entered into this Order in good faith without trial or adjudication of any issue of fact or law. GM reserves its right to seek judicial review of U.S. EPA actions taken under this Order, including a proceeding brought by the United States to enforce the Order or to collect penalties for violations of the Order.

## XIV. OTHER CLAIMS

46. GM waives any claims or demands for compensation or payment under Sections 106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred under this Order. Additionally, this Order is not a decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

## XV. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

47. GM indemnifies, saves and holds harmless the United States, its agencies, departments, agents, and employees, from all claims or causes of action arising from or on account of acts or omissions of GM or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification will not affect or limit the rights or obligations of GM or the United States under their various contracts. This indemnification will not create any obligation on the part of GM to indemnify the United States from claims arising from the acts or omissions of the United States.

## XVI. SEVERABILITY

48. If any judicial or administrative authority holds any provision of this Order to be invalid, the remaining provisions will remain in force and will not be affected.

## XVII. TERMINATION AND SATISFACTION

49. GM may request that U.S. EPA issue a determination that GM has met the requirements of the Order for all or a portion of the Facility. GM may also request that U.S. EPA issue a "no further interest" or "corrective action complete" determination for all or a portion of the Facility.

50. The provisions of the Order will be satisfied upon the parties' execution of an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights", consistent with U.S. EPA's Model Scope of Work.

51. GM's execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section VIII, to maintain any necessary institutional controls or other long term measures, and to recognize U.S. EPA's reservation of rights as required in Section XIII.

## XVIII. EFFECTIVE DATE

52. This Order is effective on the date that U.S. EPA signs the Order.

IT IS SO AGREED:

DATE: 5-16-07

BY: William J. McFarland
William J. McFarland
Director, Remediation
Worldwide Facilities Group
General Motors Corporation
Respondent

IT BEING SO AGREED, IT IS HEREBY ORDERED:

DATE: May 24, 2007

BY:
Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division
U.S. Environmental Protection Agency
Region 5

**RCRA-05-2007-0009**