



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHEAST REGIONAL OFFICE

205B Lowell Street, Wilmington, MA 01887 • (978) 694-3200

MITT ROMNEY
Governor

KERRY HEALEY
Lieutenant Governor

STEPHEN R. PRITCHARD
Secretary

ROBERT W. GOLLEDGE, Jr.
Commissioner

IN THE MATTER OF:
General Motors Corporation

RE: Framingham,
63 Western Avenue
RTN 3-04356

**ADMINISTRATIVE CONSENT ORDER AND
PENALTY
ACOP-NE-05-3A043**

May 10, 2006

William J. McFarland
General Motors Corporation
Central MC 482-520-190
2000 Center Point Parkway
Pontiac Michigan 48341-3147

Dear Mr. McFarland:

Attached is the fully executed consent order for the referenced matter. The Consent Order is effective as of the date of the Department's signature. You are now expected to comply with the requirements and schedules stated in the Disposition and Order section of the document.

If you have any questions, please contact Paegan Deering at (978) 694-3382.

Yours truly,

Iris W. Davis
Enforcement Section Chief
Bureau of Waste Site Cleanup

cc: file
James F. Hartnett, Project Manager, Environmental Services Group, General Motors Corporation,
Worldwide Facilities Group, General Motors Drive, Suite 2, Syracuse, NY 13206-1127

IN THE MATTER OF:) RE: Framingham,
General Motors Corporation) 63 Western Avenue
) RTN 3-04356
)
)
_____) **ADMINISTRATIVE CONSENT ORDER
AND PENALTY
ACOP-NE-05-3A043**

- A. The Department of Environmental Protection (the "Department" or "DEP") is a duly constituted agency of the Commonwealth of Massachusetts. Its principal office is located at One Winter Street in Boston, Massachusetts 02108.
- B. General Motors Corporation ("Respondent") is the former owner of a portion of the property located at 63 Western Avenue, Framingham, MA 01702.
- C. Respondent's Federal Employee Identification Number is: 380572515.

The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

Unless otherwise indicated, the terms used herein shall have the meaning given to them by the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E ("M.G.L. c. 21E"), and the regulations promulgated thereunder as the Massachusetts Contingency Plan ("MCP"), 310 CMR 40.0000 et seq. In addition, the following term(s) shall have the meaning defined herein:

Site shall mean the reach of the Beaverdam Brook, located as shown on Figure 1 attached hereto, which is a section of the property located at 63 Western Avenue, Framingham, MA

01702, known as the Beaverdam Brook and any other place or area where the release(s) of oil or hazardous material(s) at and/or from the Site has come to be located.

IV. STATEMENT OF LAW

The parties agree to the following statement of applicable law and to the jurisdiction and authority of the Department to issue this Consent Order:

- A. The Department is charged with the implementation and enforcement of M.G.L. c. 21E and the MCP. The Department has the authority to issue this Consent Order pursuant to M.G.L. c. 21E, § 9.
- B. The Department is authorized to issue Notices of Noncompliance and to assess civil administrative penalties pursuant to M.G.L. c. 21A, § 16, and the regulations promulgated thereunder at 310 CMR 5.00, et seq.
- C. M.G.L. c. 21E, § 9 and 310 CMR 40.0170(9) authorize the Department to enter into a consent order with a responsible party ("RP"), potentially responsible party ("PRP"), or other person, which sets forth necessary response actions, time periods, deadlines for the performance thereof, and requirements for submittals to the Department.
- D. Pertinent provision(s) of the Massachusetts Contingency Plan are as follows:
 - 1. The Role of RPs, PRPs and Other Persons in Response Actions: 310 CMR 40.0170(5) states, in part, that RPs, PRPs and Other Persons ("OPs") shall perform each and every response action properly and promptly within deadlines prescribed by, or pursuant to, M.G.L. c. 21E and/or the MCP, including any Interim Deadlines.
 - 2. Reclassification by PRPs during Response Actions: 310 CMR 40.0530(6) states, in part, that reclassification of a disposal site by RPs, PRPs and OPs shall not change the original deadlines applicable to such disposal site.
 - 3. Tier II Disposal Site Submittal Deadlines: 310 CMR 40.0560(2) states that, except as provided by 310 CMR 40.0530(6), 310 CMR 40.0560(3), or otherwise ordered or agreed to in writing by the Department, an RP, PRP, or OP undertaking response actions at a Tier II disposal site shall submit the following documents to the Department by the following deadlines: (a) a scope of work for a Phase II - Comprehensive Site Assessment prior to the implementation of Phase II field work, unless the Phase II field work had been implemented prior to Tier Classification; (b) Phase II - Comprehensive Site Assessment ("Phase II Report"), and, if applicable, a Phase III Remedial Action Plan ("Phase III Report"), within two (2) years of the effective date of Tier Classification; (c) a Phase IV Remedy Implementation Plan ("Phase IV Report") within three (3) years of the effective

date of Tier Classification; and (d) a Response Action Outcome (“RAO”) Statement within five (5) years of the effective date of Tier Classification.

4. Tier II Classification Extension: 310 CMR 40.0560(7) requires that any person undertaking response actions at a Tier II disposal site who does not achieve a RAO within five years of Tier Classification submit a Tier II Classification Extension submittal 45 days before the expiration of the Tier II Classification.
5. Tier I Disposal Site Submittal Deadlines: 310 CMR 40.0550(2) states that, except as provided by 310 CMR 40.0530(6) or 310 CMR 40.0000, or otherwise ordered or agreed to in writing by the Department, an RP, PRP, or OP undertaking response actions at a Tier I disposal site shall submit the following documents to the Department by the following deadlines: (a) a scope of work for a Phase II - Comprehensive Site Assessment prior to the implementation of Phase II field work, unless the Phase II field work had been implemented prior to Tier Classification; (b) Phase II - Comprehensive Site Assessment (“Phase II Report”), and, if applicable, a Phase III Remedial Action Plan (“Phase III Report”), within two (2) years of the effective date of Tier Classification; (c) a Phase IV Remedy Implementation Plan (“Phase IV Report”) within three (3) years of the effective date of Tier Classification; and (d) a Response Action Outcome (“RAO”) Statement within five (5) years of the effective date of Tier Classification.

V. STATEMENT OF FACTS

The following facts have led the Department to issue this Consent Order:

- A. Respondent is the former owner of the Beaverdam Brook located on a portion of the property at 63 Western Avenue, Framingham, (“Property”) from or at which there is or has been a release of oil and/or hazardous material pursuant to M.G.L. c. 21E and the MCP. The Former Settling Lagoon gravity discharged to Beaverdam Brook.
- B. In 1992, petroleum, volatile organic compounds and metals were detected in sediment and surface water collected from the Beaverdam Brook. The Department assigned release tracking number (RTN) 3-4356 to the reported Site.
- C. In February of 1993, the Respondent submitted a Waiver Application to the Department along with a Limited Site Investigation, Preliminary Assessment Report and an Interim Classification Form for the Site.
- D. In April and September of 1993, the Department requested additional samples and Respondent collected samples and submitted data to the Department.
- E. On October 1, 1993, the site was classified Tier II.
- F. In December of 1993, the Department issued a Waiver for the site.

- G. In 1994, GM sold the majority of the Property including the Beaverdam Brook to others.
- H. As of October 1, 1995, Respondent had not submitted a Phase II Report or a Phase III Report for the Site in accordance with MCP timelines.
- I. As of October 1, 1996, Respondent had not submitted a Phase IV Report for the Site in accordance with MCP timelines.
- J. As of October 1, 1998, Respondent had not submitted a Response Action Outcome Statement for the Site in accordance with MCP timelines.
- K. On August 10, 2004, the Department issued a Notice of Noncompliance (NON) to the respondent for failure to submit a Phase II Report and a Phase III Report within two years of Tier Classification as is required by 310 CMR 40.0560(2)(b), a Phase IV Report within three years of Tier Classification as is required by 310 CMR 40.0560(2)(c) and a Response Action Outcome Statement within five years of Tier Classification as is required by 310 CMR 40.0560(2)(d).
- L. On September 1, 2004, the Respondent filed a Notice of Intent (NOI) with the Framingham Conservation Commission (FCC). The FCC issued an Order of Conditions on October 1, 2004.
- M. On September 16, 2004, Respondent submitted a Tier II Extension to the Department outlining a timeline for returning to compliance with the MCP.
- N. On September 28, 2004, the Department issued an Amended Notice of Noncompliance requiring Respondent to submit an RAO by September 16, 2005.
- O. On September 29, 2004, Respondent submitted a Phase II Comprehensive Site Assessment Work Plan to the Department detailing the Phase II Comprehensive Site Assessment Scope of Work.
- P. In October 2004, Respondent conducted environmental investigations of Beaverdam Brook and adjacent areas to evaluate current conditions.
- Q. On April 8, 2005, Respondent submitted a Phase II Comprehensive Site Assessment Work Plan Addendum No. 1 and Work Plan Addendum No. 2 to the Department detailing the additional Phase II Comprehensive Site Assessment Scope of Work based on the results of the 2004 investigation.
- R. Based on the results of the 2004 investigation, Respondent conducted additional investigation activities of the Beaverdam Brook and adjacent areas from April 2005 to July 2005.

- S. On September 15, 2005, Respondent submitted a Tier IB permit application to the Department. The Permit was approved with an expiration date of October 31, 2007.
- T. On September 15, 2005, Respondent submitted an Interim Phase II Comprehensive Site Assessment Report to the Department based on the results of the 2004 and 2005 investigations.
- U. In December of 2005, Respondent conducted beaver and beaver dam removal activities at the site to address and prevent flooding in the Town of Framingham.
- V. In March of 2006, Respondent submitted a Phase II Comprehensive Site Assessment Work Plan Addendum No. 3 to the Department detailing the additional Phase II Comprehensive Site Assessment Scope of Work based on the results of the 2004 and 2005 investigations.
- W. In March 2006, Respondent notified Town of Framingham officials and property owners and commenced additional investigation activities to complete delineation of Site OHM.
- X. As of March 20, 2006, Respondent has not submitted a RAO Statement in accordance with the Amended Notice of Noncompliance.

VI. STATEMENT OF DETERMINATIONS

Based upon the Statement of Facts set forth above in Section V, the Department has determined the following:

- A. The Site is a disposal site as defined by M.G.L. c. 21E and the MCP.
- B. Respondent is an RP or PRP for the Site at which there is or has been a release of oil pursuant to M.G.L. c. 21E and the MCP.
- C. Conditions at the Site constitute a release to the environment pursuant to M.G.L. c. 21E and the MCP.
- D. Respondent failed to comply with a Notice of Noncompliance issued pursuant to M.G.L. c. 21A, § 16 and the regulations promulgated thereunder at 310 CMR 5.00 *et seq.*
- E. Respondent violated and continues to violate 310 CMR 40.0560(2)(b) for failure to submit a final Phase II Report and a Phase III Report to the Department within two years of Tier Classification.
- F. Respondent violated and continues to violate 310 CMR 40.0560(2)(c) for failure to submit a Phase IV Report to the Department within three years of Tier Classification.

- G. Respondent violated and continues to violate 310 CMR 40.0560(2)(d) for failure to submit an RAO Statement to the Department within five years of Tier Classification.

VII. DISPOSITION AND ORDER

For the reasons set forth above, the Department hereby issues, and Respondent hereby consents to, this Order:

- A. The Department's authority to issue this order is conferred by M.G.L. c. 21E and the regulations promulgated thereunder at 310 CMR 40.0000, and M.G.L. c. 21A, § 16 and the regulations promulgated thereunder at 310 CMR 5.00. Respondent admits to the jurisdiction and authority of the Department to issue this Consent Order.
- B. This Consent Order shall be binding upon Respondent and upon Respondent's heirs, successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's directors, officers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.
- C. Unless otherwise indicated herein, the actions performed pursuant to this Consent Order shall be performed in accordance with M.G.L. c. 21E, the MCP and any other applicable federal, state or local laws, regulations and approvals.
- D. Unless a Downgradient Property Status (DPS) Submittal or Response Action Outcome (RAO) Statement is submitted earlier, Respondent shall submit the following to DEP on or before the deadlines established herein:
1. By December 31, 2006, Respondent shall submit to the Department a Phase II Report which meets the requirements of 310 CMR 40.0550(2)(b) and 310 CMR 40.0800.
 2. By June 15, 2007, Respondent shall submit to the Department a Phase III Report which meets the requirements of 310 CMR 40.0550(2)(b) and 310 CMR 40.0800.
 3. By December 31, 2007, Respondent shall submit to the Department a Phase IV Report which meets the requirements of 310 CMR 40.0550(2)(c) and 310 CMR 40.0800.
 4. By November 18, 2009, Respondent shall submit to the Department an RAO Statement which meets the requirements of 310 CMR 40.0550(2)(d) and 310 CMR 40.1000.
- E. All submittals required pursuant to 310 CMR 40.0000 et seq. or this Consent Order shall be in compliance with the MCP, including without limitation any other applicable

timelines and Performance Standards. Failure to provide a submittal in compliance with this Consent Order, the MCP, applicable timelines and/or Performance Standards, shall constitute a violation of this Consent Order and shall be subject to Stipulated Penalties as provided in Section IX below.

VIII. PENALTY ASSESSMENT

- A. For the violations listed in Sections IV through VI above, Respondent is assessed a civil administrative penalty in the amount of dollars Thirty Three Thousand dollars (\$33,000.00). Such penalty is payable as follows:
1. \$16,500 within sixty days of the effective date of this Consent Order; and
 2. \$16,500 should Respondent fail to make timely payment of the required \$16,500, or should Respondent violate any other provisions of this Consent Order. Respondent shall pay this suspended \$16,500 penalty within 30 days of the date the Department sends a written claim to Respondent describing the violation and demanding said payment.
- B. Payment of the penalty must be by certified check, cashiers check or money order, payable to the "Commonwealth of Massachusetts." Respondent's Federal Employer Identification Number and the words "In the Matter of the General Motors Corporation, ACOP-NE-05-3A043" must be clearly written on the face of each check or money order. The Commonwealth will not accept any other form of payment. The payment must be directed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3982
Boston, MA 02241-3982

In addition, photocopies of the checks or money orders shall be sent to DEP at the Notice address herein, ATTN: Stephen M. Johnson.

- C. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

IX. STIPULATED PENALTIES

- A. If Respondent fails to meet any of the terms or requirements of this Consent Order, Respondent shall pay the Commonwealth a stipulated penalty in the amount of Five Hundred Dollars (\$500.00) per violation for each day, or any portion thereof, each such violation continues. Stipulated penalties shall begin to accrue the day the performance is

due or the day a violation occurs and shall continue to accrue through the final day of the correction of the violation or completion of the activity.

- B. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Consent Order. Stipulated penalties shall accrue regardless of whether the Department has notified Respondent of the violation. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order.
- C. All stipulated penalties accruing under this Consent Order shall be paid within thirty (30) days of the date the Department sends a written demand therefore. Payment of such penalties shall be made by certified check, cashiers check or money order, payable to the "Commonwealth of Massachusetts." Respondent's federal employer identification number and the words, "In the Matter of the General Motors Corporation, ACOP-NE-05-3A043" must be clearly written on the face of the check or money order. The Commonwealth will not accept any other form of payment. The payment must be directed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3982
Boston, MA 02241-3982

In addition, photocopies of the check or money order shall be sent to the Department at the Notice address herein, ATTN: Stephen M. Johnson.

X. FORCE MAJEURE

- A. The Department agrees to extend the time for performance of any requirement of this Consent Order if the Department determines that such failure to perform is caused by a Force Majeure event. The failure to perform a requirement of this Consent Order shall be considered to have been caused by a Force Majeure event if the following criteria are met: (1) an event delays performance of a requirement of this Consent Order beyond the deadline established herein; (2) such event is beyond the control and without the fault of Respondent and Respondent's employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Respondent or Respondent's employees, agents, consultants, and contractors.
- B. Financial inability and unanticipated or increased costs and expenses associated with the performance of any requirement of this Consent Order shall not be considered a Force Majeure Event.
- C. If any event occurs that delays or may delay the performance of any requirement of this Consent Order, Respondent shall immediately, but in no event later than 5 days after obtaining knowledge of such event, notify the Department in writing of such event. The

notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. If Respondent intends to attribute such delay or potential delay to a Force Majeure event, such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event. Failure to comply with the notice requirements set forth herein shall constitute a waiver of Respondent's right to request an extension based on the event.

- D. If the Department determines that Respondent's failure to perform a requirement of this Consent Order is caused by a Force Majeure event, and Respondent otherwise complies with the notice provisions set forth in paragraph C above, the Department agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure event. No extension shall be provided for any period of time that Respondent's failure to perform could have been prevented, avoided or minimized by the exercise of due care. No penalties shall become due for Respondent's failure to perform a requirement of this Consent Order during the extension of the time for performance resulting from a Force Majeure event.
- E. A delay in the performance of a requirement of this Consent Order caused by a Force Majeure event shall not, of itself, extend the time for performance of any other requirement of this Consent Order.

XI. NOTICES AND SUBMITTALS

All notices, payments, certifications, submissions or other communications required to be made hereunder shall, unless otherwise indicated in this Consent Order, be made in writing and shall, unless otherwise indicated in this Consent Order, be sent by certified mail, return receipt requested, by hand delivery or by recognized overnight courier, as follows:

If to the Department, to:

Stephen M. Johnson, Acting Deputy Regional Director
Department of Environmental Protection
205B Lowell Street
Wilmington, MA 01887

If to Respondent, to:

James F. Hartnett, Project Manager
Environmental Services Group
General Motors Corporation
Worldwide Facilities Group
1 General Motors Drive, Suite 2
Syracuse, NY 13206-1127

Submittals will be considered delivered upon receipt by the Department.

XII. WAIVER OF HEARING

Respondent understands and hereby waives its right to an adjudicatory hearing before the Department on, and judicial review by the courts of, the issuance or terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the Department.

XIII. RESERVATION OF RIGHTS

- A. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of the Department to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of the Department to pursue any other claim, action, suit, cause of action, or demand which the Department may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to: (a) enforce this Consent Order in an administrative or judicial proceeding; (b) recover costs incurred by the Department in connection with response actions conducted at the Site; and (c) recover damages for injury to and for destruction or loss of natural resources pursuant to M.G.L. c. 21E, § 5 or 42 U.S.C. 9601, et seq.
- B. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting the Department's authority to: (a) perform response actions at the Site or (b) require Respondent to conduct response actions at the Site or take other actions beyond those required by this Consent Order in order to comply with all applicable laws and regulations including, without limitation, M.G.L. c. 21E and the MCP.
- C. Respondent reserves any rights it may have to appeal or defend any such order, claim, action, suit, cause of action, or demand, except that Respondent shall not challenge the validity, terms and binding nature of this Consent Order.
- D. Notwithstanding the foregoing, the Department agrees that it will not seek to assess Respondent civil administrative penalties beyond those assessed in this Consent Order for the violations identified in Part VI above, provided that Respondent satisfies the terms and conditions of this Consent Order and any permit or approval issued hereunder.

XIV. ACCESS

To the best of Respondent's ability, because it does not own the site, Respondent agrees to provide the Department and the Department's employees, representatives and contractors access to the Site at all reasonable times for purposes of conducting any activity related to its

oversight of this Consent Order. Notwithstanding any provision of this Consent Order, the Department retains all its access authorities and rights under applicable state and federal law.

XV. CONSEQUENCES OF VIOLATION OF THE CONSENT ORDER

For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. The Department hereby determines, and Respondent hereby agrees, that the deadlines set forth above constitute reasonable periods of time for Respondent to take the actions described.

XVI. MODIFICATION

This Consent Order may be modified only upon the written agreement of the Department and Respondent.

XVII. SEVERABILITY

If any term or provision of this Consent Order or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Consent Order, or the application thereof, shall be valid and enforceable to the fullest extent permitted by law. In the event of such invalidity or unenforceability, the Department may in its sole discretion elect to void the entire Consent Order.

XVIII. EFFECTIVE DATE

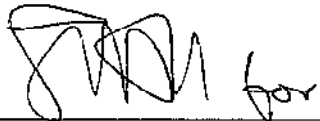
- A. This Consent Order shall become effective and shall be deemed to be consented to as of the date of the Department's signature set forth below.
- B. Each undersigned hereby certifies that s/he is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind himself/herself and/or the party on whose behalf such representative is signing.

XIX. TERMINATION

Respondent's obligations under this Consent Order shall cease upon Respondent's completion of all actions and payments required pursuant to this Consent Order.

SO ORDERED:

For the DEPARTMENT OF ENVIRONMENTAL PROTECTION,

By: 

Richard J. Chalpin, Regional Director

Date: 5/4/06

Department of Environmental Protection
Northeast Regional Office
205 B Lowell Street, Wilmington, MA 01887

CONSENTED TO: For the General Motors Corporation

By: William J. McFarland Date: 4-20-06

Printed Name: WILLIAM J. MCFARLAND Title: DIRECTOR

Address: 2000 CENTERPOINT PARKWAY

Address: PONTIAC, MI 48341

FEIN: 380572515