

## **Oesterling, Mark (EGLE)**

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**From:** ERMISCHB@DEQ-SC.DEQ-ERD  
**Sent:** Friday, November 6, 1998 4:06 PM  
**To:** 'LNUSBCY.1QZDGCV@gmeds.com'  
**Cc:** 'INNESJ@DEQ-SC.DEQ-Shiawassee'  
**Subject:** Linden Road Landfill Legal Agreement  
**Attachments:** LINDEN~2.RTF

Bob please find attached a draft copy of the above. I thought it might be easier if I sent you a electronic version of the document so that you could do a compare-write and/or send it to others electronically.

Most of the changes/revisions are just academic and come directly from the April 2, 1998 model document. These modifications are intended to help clarify certain aspects of the document and may help in the expeditious review of upper management.

This document has not been approved by management and is being provided for negotiation purposes only.

When you have time we can talk about the legal agreement, Attachment "B" to the legal agreement (DRAFT OPERATION AND MAINTENANCE PLAN - LINDEN ROAD SITE FLINT TOWNSHIP, MICHIGAN), the restrictive covenant and the "Land/Resource Restrictions" attachment to the restrictive covenant.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

Linden Road Landfill,  
Genesee County, Michigan

MDEQ Reference No.:  
LANDUSE-ERD-98-011

AGREEMENT FOR A LIMITED RESIDENTIAL REMEDY

This Agreement for a Limited Recreational Remedy (hereinafter referred to as the "Agreement") is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ), Environmental Response Division and General Motors Corporation for the purpose of specifying the agreed upon conditions for a Limited Recreational based Remedial Action Plan (RAP) approval at the Linden Road Landfill. By execution of this Agreement, the MDEQ and the General Motors Corporation stipulate and agree to be bound by all of the recitals, terms, and conditions herein.

RECITALS

Whereas, any remedial action undertaken pursuant to Section 20120b(3) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 et seq; or the Part 201 Rules, 1990 AACS R 299.5101 et seq, which may include land use or resource use restrictions, monitoring, operation and maintenance, installation of permanent markers, and continued financial responsibility, if determined by the MDEQ to be necessary, shall be stipulated in a legally enforceable agreement with the MDEQ; and

Whereas, this Agreement pertains to the Facility located in Flint Township, County of Genesee, State of Michigan, described in Attachment A and commonly known as the Linden Road Landfill; and

Whereas, the RAP for a Limited Recreational Remedy submitted by the General Motors Corporation in January 1996, to the MDEQ, including its attachments and any MDEQ-approved modifications, complies with applicable requirements under Part 201 of the NREPA and the Part 201 administrative rules and will be considered approved through the execution of this Agreement; and

Whereas, this Agreement satisfies the requirements of Section 20120b(3) of the NREPA, as amended in June 1995.

Based on the foregoing Recitals and in consideration of the MDEQ's approval of the RAP for a Limited Recreational Remedy, the General Motors Corporation and the MDEQ hereby stipulate and agree as follows:

## **I. PARTIES BOUND**

1.1 This Agreement shall apply to and be binding upon MDEQ and the General Motors Corporation and its successors and assigns. No change in ownership or corporate status of the General Motors Corporation shall in any way alter General Motors Corporation's responsibilities under this Agreement. Any agreement assigning or transferring the rights, duties and benefits of this Agreement shall provide that the terms and conditions of this Agreement are binding upon the assignee or transferee. The General Motors Corporation shall provide the MDEQ with written notice of the intent to transfer ownership of part or all of its ownership interest in the property at the Linden Road Landfill. Such transfer or assignment shall not occur without adequate and complete provision for the continued operation and maintenance of the remedial action and the prevention of exposures as described in the Restrictive Covenant.

1.2 The signatories to this Agreement certify that they are authorized to execute it and legally bind the parties they represent.

## **II. DEFINITIONS**

2.1 The term "FAM" means a financial assurance mechanism acceptable to the MDEQ to pay for monitoring, operation and maintenance, oversight, and other costs determined by the MDEQ to be necessary to assure the effectiveness and integrity of the remedial action. The FAM is a component of the Remedial Action Plan.

2.2 The term "MDEQ" means the Michigan Department of Environmental Quality and any authorized representatives acting on its behalf.

2.3 The term "Operation and Maintenance Plan" or "O&M Plan" means the Operation, Maintenance and Long-Term Monitoring Plan (Attachment B) and which constitutes a portion of the Remedial Action Plan.

2.4 The term "Remedial Action Plan," "Limited Land Use or Site-Specific, Criteria-Based Remedial Action Plan" or "RAP" means the Remedial Action Plan for the Linden Road Landfill prepared by Roy F. Weston, Inc. and submitted to MDEQ in January 1996, including any MDEQ-approved modifications to the RAP.

2.5 The term "State" means the State of Michigan, any of its agencies and any authorized representatives acting on its behalf.

## **III. FINANCIAL ASSURANCE MECHANISM**

3.1 The General Motors Corporation shall provide a financial assurance mechanism for parcel #1 (see Attachment A) in the form of a Certificate of Deposit to secure the performance of operation and maintenance, oversight, monitoring and other costs necessary to secure the effectiveness and integrity of the containment measure set forth in the RAP in perpetuity. The Certificate of Deposit is included as Attachment C.

#### **IV. IMPLEMENTATION**

4.1 The General Motors Corporation agrees to implement and comply with the terms and conditions of the RAP. As approved, each component of each work plan and its approved modifications shall be deemed incorporated into this Agreement and made an enforceable part of this Agreement.

4.2 Within sixty (60) days of the first anniversary of this agreement and within sixty (60) days of each anniversary thereafter, the General Motors Corporation shall provide an annual report to the MDEQ project coordinator describing the implementation of the RAP, including, but not limited to, the operation and maintenance activities and any other response activities that have been undertaken by the General Motors Corporation at the Facility for the prior year. The report shall describe any modifications to the RAP that should be implemented to assure the continued effectiveness and integrity of the remedial action.

4.3 The MDEQ reserves the right to review all records, data and reports documenting the operation and maintenance activities that have been undertaken by the General Motors Corporation.

4.4 Approval of the RAP shall not be construed to mean that the MDEQ concurs with all conclusions, methods or statements in the RAP or warrants that the RAP comports with law.

4.5 Within 120 days of obtaining MDEQ approval, the General Motors Corporation shall properly remove or plug all monitor wells that were installed as part of the response activity at or related to the Facility and that will not be used for long-term monitoring at the Facility in accordance with Part 625, Mineral Wells, and its promulgated administrative rules, of the NREPA. Proper well abandonment procedures described in the Michigan Water Well Construction and Pump Installation Code, Part 127 of 1978 PA 368, as amended, and its rules, shall be used by the General Motors Corporation in plugging all wells.

4.6 The General Motors Corporation shall, upon completion of the response activities detailed in the RAP, including operation and maintenance and long-term monitoring, provide notice to and obtain approval from the MDEQ and implement the proper removal or plugging of all remaining monitor wells at or related to the Facility in accordance with Part 625, Mineral Wells, and its promulgated administrative rules, of the NREPA. Proper well abandonment procedures described in the Michigan Water Well Construction and Pump Installation Code, Part 127 of 1978 PA 368, as amended, and its rules, shall be used by the General Motors Corporation in plugging all wells.

4.7 If, based upon new information, the MDEQ determines that a modification to the work specified in the approved RAP is necessary to meet and maintain the performance standards described in Part 201 of the NREPA and its administrative rules, the MDEQ may require that such modification be incorporated into the RAP. Alternatively, if the necessary modifications are extensive, the MDEQ may require the General Motors Corporation to submit a proposed plan to the MDEQ for review and approval. However, such modifications may only be required pursuant to this Paragraph to the extent that those modifications are consistent with the scope of the approved Limited Recreational RAP.

4.8 The RAP may only be modified by written agreement between the General Motors Corporation's Project Coordinator and the MDEQ, ERD Division Chief or his or her representative.

## **V. RESTRICTIVE COVENANT**

5.1 The General Motors Corporation shall record with the Genesee County Register of Deeds the attached Restrictive Covenant (Attachment D) within 21 days of the completion of construction of the containment or barrier. The Restrictive Covenant shall comply with the requirements of Section 20120b(4) of Part 201 of the NREPA.

5.2 The General Motors Corporation shall provide a true copy of the recorded Restrictive Covenant to the MDEQ within ten (10) days after the document is recorded and returned. The copy provided to the MDEQ shall include the liber and page number.

## **VI. ACCESS TO PROPERTY AND RECORDS**

6.1 Upon the Effective Date of this Agreement, the MDEQ and its authorized employees and representatives shall have an irrevocable right-of-access at all reasonable times to the Property for the purpose of determining and monitoring compliance with the RAP, including the right to take samples, inspect the operation of remedial action measures, and inspect records related to the RAP.

6.2 This Agreement does not restrict or limit any right that the MDEQ may have to enter the Property or other properties to which access is required for the protection of the public health, safety or the environment pursuant to specific statutory or regulatory authority. Consistent with the MDEQ's responsibilities under federal or state law, the MDEQ and its authorized representatives shall use their best efforts to minimize interference and whenever possible employ efforts that are the least intrusive to the operations and commercial activities on the Property. "Best efforts" shall not require the MDEQ to incur any material cost increases in carrying out its responsibilities to protect the public health, safety or welfare or the environment.

## **VII. PAYMENT OF OVERSIGHT COSTS**

The General Motors Corporation shall reimburse the MDEQ for all costs lawfully incurred by the State in overseeing implementation of the RAP, including oversight of the O &

M Plan as set forth in Attachment B. Following each anniversary of the date of this Agreement, the MDEQ will provide the General Motors Corporation with a summary of all oversight costs incurred during the preceding year. The General Motors Corporation shall pay oversight costs lawfully incurred by the State within thirty (30) days of receipt of the oversight cost summary.

### **VIII. COVENANT NOT TO SUE THE STATE/INDEMNIFICATION**

The General Motors Corporation hereby covenants not to sue or take any civil, judicial or administrative action against the State, its agencies, the MDEQ or their authorized representatives, for any claims arising from or connected with the MDEQ's approval or implementation of the RAP, including the execution of this Agreement. The General Motors Corporation also agrees to indemnify the State of Michigan, its agencies, the MDEQ and their authorized representatives from any and all claims or costs of defending any and all claims brought by others based upon, arising from, or connected with the implementation of this Agreement.

### **IX. REMEDIES FOR BREACH OF AGREEMENT**

9.1 The General Motors Corporation and the MDEQ recognize and agree that this Agreement is a legally enforceable contract as required by Section 20120b(3) of Part 201 and may be enforced in a court of competent jurisdiction. For that purpose, the General Motors Corporation consents to the jurisdiction of the Ingham County Circuit Court in any action by the State to enforce this Agreement. The General Motors Corporation also recognizes and understands that the MDEQ's remedies in the event the General Motors Corporation breaches the terms and conditions of this Agreement may include, but are not limited to, specific performance, issuance of a unilateral administrative order under Sections 20114(1)(h) or 20119 of the NREPA, MCL 324.20114(1)(h), 324.20119, reimbursement of State costs, or any other statutory or common law remedy subject to the rights or defenses available to the General Motors Corporation under applicable law.

9.2 This Agreement shall not be construed as discharging the liability of any person or entity.

9.3 Nothing in this Agreement shall affect the duties and obligations that the General Motors Corporation may have with respect to permits or other governmental approvals or waive the General Motors Corporation's duties and obligations under other applicable federal or state laws.

9.4 If provisions for any of the following, determined by the MDEQ to be applicable for the Facility, lapse or are not complied with as provided in this Agreement or RAP, MDEQ's approval of the RAP is void from the time of the lapse or violation, unless the lapse or violation is corrected to the satisfaction of the MDEQ:

- (a) Land Use or Resource-Use Restrictions
- (b) Monitoring

- (c) Operation and Maintenance
- (d) Permanent Markers
- (e) Financial Assurance

If the General Motors Corporation fails to correct the lapse or violation within thirty (30) days of written notification of such lapse, the MDEQ, at its option, may perform the response activities that the General Motors Corporation has failed to perform. The General Motors Corporation shall reimburse the State for costs it incurs to perform those response activities within thirty (30) days of the General Motors Corporation's receipt of a cost summary report or the State shall be reimbursed from the Financial Assurance Mechanism for such work.

9.5 In the event the MDEQ's approval of the RAP becomes void, all other terms of this Agreement shall remain in full force and effect.

## **X. NOTICES**

Whenever, under the terms of this Agreement, notice is required to be given or a report, sampling data, analysis, or other document is required to be forwarded by one party to the other, such correspondence shall be directed to the following individuals at the specified addresses or at such other address as may subsequently be designated in writing:

### **As to MDEQ:**

James E. Innes  
Environmental Response Division  
Telephone: (517) 625-4693

(Regular Mail)  
Shiawassee District Office  
10650 S. Bennett Dr.  
Morrice, MI 48857-9792

(Via Courier)  
Same

### **As to General Motors Corporation:**

Robert Metcalf  
General Motors Corporation  
Telephone: (810) 236-0300

(Regular Mail)  
902 East Hamilton Avenue  
Mail Code 485-185-020  
Flint, MI 48457

(Via Courier)  
Same

### **As to MDEQ for financial/escrow matters/reimbursement of State costs:**

Mr. Larry Elmleaf, Chief, Enforcement and Cost Recovery Unit  
Environmental Response Division  
Telephone: (517) 335-4029\_\_\_\_\_

Regular Mail:  
Environmental Response Division  
Michigan Department of Environmental Quality  
P.O. Box 30426  
Lansing, MI 48909

(Via Courier)  
Same

## **XI. MODIFICATIONS**

This Agreement shall not be modified unless such modification is in writing and signed by the General Motors Corporation's Project Coordinator and the MDEQ, ERD Division Chief or his or her representative.

## **XII. RESERVATION OF RIGHTS**

12.1 The parties reserve any and all rights available to them pursuant to Part 201 of the NREPA or any other legal authority to bring an action as provided by law.

12.2 Nothing in this Agreement constitutes or may be construed as a release or covenant not to sue by the State regarding any claim, cause of action or demand in law or equity against any person, firm, trust, trustee, joint venture, partnership, corporation, member or other entity, for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, hazardous wastes, pollutants, contaminants or injurious substances found at, taken to, or taken from the Facility.

## **XIII. NOTICE TO EASEMENT HOLDERS**

13.1 The General Motors Corporation shall perform the following activities within thirty (30) days after the effective date of this Agreement:

- (a) Provide notice to each easement holder of record at the Facility that the Linden Road Landfill site is a "facility" under Part 201 of the NREPA
- (b) Provide a copy of the MDEQ-approved restrictive covenant to each easement holder of record at the Facility.

13.2 This section is subject to the Land Use or Resource-Use Restrictions provision stated in Section IX, Paragraph 9.4(a). Accordingly, if this notice is not sent within the thirty (30)-day period, the MDEQ's approval of the RAP is void unless the lapse is corrected to the satisfaction of the MDEQ.

#### **XIV. APPLICABLE LAW**

14.1 This Agreement shall be construed in accordance with the laws of the State of Michigan. All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of Part 201 of the NREPA, the Part 201 Rules and any other applicable laws.

14.2 All terms used in this Agreement, which are defined in Part 201 of the NREPA, MCL 324.20101 et seq; and/or the Part 201 Rules, 1990 AACRS R 299.5101 et seq, shall have the same meaning in this Agreement as in Part 201 of the NREPA and the Part 201 Rules. If a conflict exists between the Rules and the statute, the statute prevails.

#### **XV. DISSOLUTION**

In the event that the General Motors Corporation dissolves or otherwise ceases to conduct business and fails to make arrangements which are acceptable to the MDEQ for the continued implementation of the O&M Plan, all rights under this Agreement regarding the financial assurance mechanism shall immediately and automatically vest in the MDEQ.

#### **XVI. CERTIFICATION**

16.1 When the General Motors Corporation determines that it has completed all the response activities required by this Agreement and the RAP, including operation and maintenance activities and long-term monitoring, it shall submit to the MDEQ a Notification of Completion of Remedial Action (Notification) and a draft completion report. The draft completion report shall summarize all response activities performed under this Agreement and shall include or reference any supporting documentation.

16.2 Upon receipt of the Notification, the MDEQ will review the Notification, the draft completion report and any supporting documentation. Within ninety (90) days of receipt of the Notification, the MDEQ will determine whether the General Motors Corporation has satisfactorily completed all response activities described in the RAP, including, but not limited to, implementation of all operation and maintenance activities, long-term monitoring, and proper abandonment of all remaining monitor wells, and has reimbursed the State its costs as required by this Agreement. If the MDEQ determines that all response activities have been completed and all costs, as required by this Agreement and the RAP, have been paid to the State, the MDEQ will so notify the General Motors Corporation. Upon MDEQ's receipt of a "Final" completion report from the General Motors Corporation, the MDEQ shall issue a Certification of Completion of Remedial Action. The financial assurance mechanism established pursuant to Section III may be dissolved after issuance of the Certification of Completion of Remedial Action.

**XVII. SEVERABILITY**

The provisions of this Agreement are severable, and if any provision is declared by a court of competent jurisdiction to be inconsistent with federal or state law and, therefore, unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, except that such severance shall not be allowed if the severance of such provision causes the Agreement to fail in its essential purposes.

**XVIII. SEPARATE DOCUMENTS**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

**XIX. EFFECTIVE DATE**

This Agreement shall become effective on the date it is fully executed by all parties to this Agreement.

\_\_\_\_\_ Dated: \_\_\_\_\_  
Alan J. Howard, Chief  
Environmental Response Division  
Michigan Department of Environmental Quality

\_\_\_\_\_ Dated: \_\_\_\_\_  
[Authorized Representative of PPP], General Motors Corporation  
[Name]  
[Title]